Rules and Regulations

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DEPARTMENT OF JUSTICE

8 CFR Part 3

28 CFR Part 0

[EOIR No. 116F; AG Order No. 2062–96]

RIN 1125–AA17

Executive Office for Immigration Review; Board of Immigration Appeals; Board Members

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Final rule.

SUMMARY: This final rule expands the Board of Immigration Appeals (Board) to fifteen permanent members, including fourteen Board Members and a Chairman. This expansion is necessary because of the Board's increasing caseload. In order to maintain an effective, efficient system of appellate adjudication, it has become necessary to increase the number of Board Members.

EFFECTIVE DATE: This final rule is effective November 22, 1996.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone: (703) 305–0470.

SUPPLEMENTARY INFORMATION: This final rule provides for an expansion of the Board of Immigration Appeals to a fifteen-member permanent Board. This expansion is necessary because of the Board's increasing caseload. To maintain an effective, efficient system of appellate adjudication, it has become necessary to increase the number of Board Members. This change will allow the Board to sit in five permanent member panels of three. In addition, this change will further enhance effective, efficient adjudication while providing for en banc review in appropriate cases. This rule amends 8 CFR part 3 and 28 CFR part 0 to reflect the new fifteen member Board.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule relates to agency procedure and practice.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This rule has no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612.

Executive Order 12988

The rule complies with the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No. 12988.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Lawyers, Organizations and functions (Government agencies), Reporting and recordkeeping requirements.

28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

For the reasons set forth in the preamble, part 3 of title 8 of the Code of Federal Regulations and part 0 of title 28 of the Code of Federal Regulations are amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 is revised to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

Subpart A—Board of Immigration Appeals

§ 3.1 [Amended]

2. In § 3.1, paragraph (a)(1) is amended by removing the word ''eleven'' in the second sentence and adding in its place the word ''fourteen.''

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

3. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

Subpart U—Executive Office for Immigration Review

§ 0.116 [Amended]

4. Section 0.116 is amended by removing the word ''eleven'' in the first sentence and adding in its place the word ''fourteen.''

Dated: November 14, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–29699 Filed 11–21–96; 8:45 am]

BILLING CODE 4410–19–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Interim final rule with request for comments and Interpretive Ruling and Policy Statement 96–2 (IRPS 96–2).

SUMMARY: The purpose of this interim Interpretive Ruling and Policy Statement is to permit federal credit unions to restructure their fields of membership consistent with the recent Court of Appeals decision (''the Decision'') and District Court order (''the Order'') limiting federal credit unions' ability to serve eligible credit union members and new select groups. NCUA recognizes that this interim policy will not provide complete relief to all multiple group federal credit unions, since any interim policy must meet the requirements set forth in the Decision and the Order. Similarly, this interim policy does not assist

individuals who wish to obtain, but do not currently have, access to federal credit unions as a result of the Decision. This interim policy is intended to provide limited and temporary relief until the legal issues with respect to the Decision are finally resolved. NCUA is also issuing a final amendment to update its rules entitled ''Organization and Operations of Federal Credit Unions.''

DATES: The interim rule is effective November 14, 1996. Comments must be received on or before February 1, 1997.

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. Post comments on NCUA's electronic bulletin board by dialing (703) 518–6480. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: J. Leonard Skiles, President, Asset Management and Assistance Center, 4807 Spicewood Springs Road, Suite 5100, Austin, Texas 78759, or telephone (512) 795–0999; Stephen E. Austin, Director of Supervision, Office of Examination and Insurance, 1775 Duke Street, Alexandria, Virginia, or telephone (703) 518–6360, Lynn K. McLaughlin, Program Officer, at the above address and telephone number, Michael J. McKenna, Acting Associate General Counsel, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION: In 1982, safety and soundness concerns prompted the NCUA Board to revise chartering policy consistent with the Federal Credit Union Act to permit the combination of multiple groups with unlike common bonds. Such combinations could be accomplished through the chartering process, amendment of the charter, or by way of merger to form a single credit union. Another primary reason for the policy change was to provide small groups of people who did not have the resources to charter their own credit unions access to credit union service.

In First National Bank and Trust Co., et al. v. *NCUA*, the U.S. Court of Appeals for the District of Columbia Circuit invalidated certain select group additions to the field of membership of a North Carolina credit union (''the Decision''). In the context of that case, the Court ruled that groups with unlike common bonds could not be joined to form a single credit union. Furthermore, in the consolidated cases of *First National Bank and Trust Co., et al.* v. *NCUA* and the *American Bankers Association* v. *NCUA, et al.*, the District Judge issued a nationwide injunction ordering that federal credit unions are immediately barred from adding select groups without the same common bond to their fields of membership (''the Order''). The District Court further ordered that federal credit unions are prohibited from adding any new members to select groups which were added pursuant to the multiple group policy. The Order adversely impacts approximately 158,000 select groups in 3,586 multiple group federal credit unions. NCUA has analyzed the impact of the Order and has determined that it has created and will continue to create disruption in the operations of credit unions. Equally important, a significant number of persons in small groups will be denied access to credit union services. This is particularly burdensome and harmful to persons in low to moderate income communities.

The Court of Appeals, in its Decision, recognized that NCUA may identify and approve interpretations that provide broader common bonds than NCUA's current ''single employer'' policy. This interim policy, therefore, affords some relief to the federal credit unions affected by the Order by allowing them to restructure their existing fields of membership within the limits of the Federal Credit Union Act as construed in the Decision. NCUA will continue to pursue all available legal means to seek reversal of the Decision and Order. The interim policy is not intended to exhaust NCUA's authority to interpret the common bond provisions. NCUA will continue to review possible chartering and field of membership policy changes in an effort to permit federal credit unions to exercise to the fullest extent possible their ability to serve those who want or need credit union service.

This interim policy takes effect immediately upon adoption by the NCUA Board and is effective until further notice. To the degree this policy is inconsistent with IRPS 94–1, as amended by IRPS 96–1, those policies are superseded and this policy statement is controlling. More specifically, the select group policies and those procedures related to the select group polices, such as the Streamlined Expansion Procedure, are superseded. To the extent any action taken pursuant to this interim policy is more restrictive than any future revision of this interim rule requires, then the more restrictive provisions adopted by the credit unions can be modified. To the extent any action taken pursuant to this interim rule is less restrictive than any future revision of this interim rule requires, then the less restrictive provisions adopted by credit unions will not be unilaterally revoked by NCUA.

The NCUA Board has adopted three basic substantive changes to current chartering and field of membership policy as set forth in IRPS 94–1 as amended by IRPS 96–1. These changes include adding a fourth definition of occupational common bond, streamlining the documentation requirements for a community charter, and adding a subset to the community charter option.

Occupational Common Bond

IRPS 94–1, and previous policy statements by NCUA since 1982, allowed the combination of unlike common bond groups. Federal credit unions that utilized the multiple group policy and now have select groups within their fields of membership must now designate a core common bond. This designation of a core common bond is extremely important and must be completed by March 1, 1997. New field of membership expansions will not be permitted unless a core common bond has been designated. Those groups that are not within the core common bond cannot be served, except that members of record as of October 25, 1996, can still receive service from the credit union. New members can only be added from the core common bond.

Consistent with the Decision in *First National Bank and Trust Company, et al.* v. *NCUA*, the NCUA Board is adding a fourth definition of occupational common bond. Under previous policy, an occupational common bond was based on:

- Employment (or a long-term contractural relationship equivalent to employment) in a single corporation or other legal entity;
- Employment in a corporation or other legal entity with an ownership interest in or by another legal entity; and
- 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).

Pursuant to this interim policy, an occupational common bond incorporates any charter based on employment in a trade, industry, or profession. This type of common bond can include employment at any number of corporations or other legal entities, that while not under common ownership, share a common bond by

virtue of producing similar products or providing similar services. While there is some latitude in defining trade, industry, or profession, the groups must have a close nexus. NCUA will evaluate such factors as the nature, size and diversity of the trade, industry, or profession and the geographic limits associated with the proposed charter. For example, all manufacturing enterprises in Seattle, Washington, would not qualify since manufacturing, in and of itself, is overly broad and would include manufacturing of all types of products. However, all computer software manufacturers in Seattle would qualify, since it relates to a specific type of manufactured product. This type of common bond charter can be similar to, but distinguishable from, a common bond based on a single corporation. For example, all Navy personnel would qualify as a single corporation (employer), but all teachers would not. The latter would be a profession and subject to certain limitations as discussed below. NCUA will interpret the industry standard in a manner consistent with the Act and Congressional purpose.

Further examples of this type of occupational common bond include all textile workers, all coal miners, or the medical profession. Federal credit unions with this type of occupational common bond can only provide credit union service to those qualifying groups within the credit union's operational area. For example, a credit union located in California may serve the oil industry, but such groups must be within the operational area of the credit union's service facilities.

As defined in IRPS 94–1, operational area is that area which, as determined by NCUA, in its sole discretion, may reasonably be served by the service facilities that will be accessible to the groups in the field of membership. The operational area will vary depending on the location of the credit union. For example, the operational area for a credit union in an urban area may be smaller than the operational area for a credit union in a sparsely populated rural district.

An existing credit union that wishes to serve a trade, industry, or profession must first designate its occupational common bond. This requirement does not apply to a new charter. This could be the original core common bond group or another group within its field of membership. For example, a credit union that serves primarily teachers, but whose original core common bond was municipal employees, could designate teachers or ''education'' as it occupational common bond. It would then be able to add new members from that occupational group. However, the designation must come from an existing group within its current field of membership. For example, a credit union that serves primarily teachers, could not be redesignated as a credit union serving the auto industry if the auto industry is not already included in the field of membership.

To designate its common bond, the credit union must submit a request to the appropriate regional director. If the request is approved, the credit union may immediately begin serving all groups within its previously existing field of membership meeting this occupational common bond definition. Credit unions that have groups within their fields of membership that do not meet this new definition, cannot add new members from those groups. For these groups, credit unions can only serve members of record as of October 25, 1996.

To add new groups from within the new occupational common bond, the credit union must apply and obtain written approval of the regional director. The application letter must demonstrate that the group is within the common bond, the group has provided a written request for service, the group presently does not have service available, and the group is within the operational area of one of the credit union's service facilities. If the group to be added was previously served by another credit union but has lost service as a result of the court decisions, the credit union wishing to add the group must consult with the other credit union prior to submitting its application to NCUA.

Community Chartering Policy

NCUA's community chartering policy is not affected by the ongoing litigation. However, the NCUA Board is making two changes to the community chartering policy that are consistent with the Federal Credit Union Act in order to provide all federal credit unions with further options in restructuring their fields of membership.

First, the documentation requirements for a community charter have been streamlined. A credit union that wants to serve anyone who lives, works, worships, or goes to school in a community area must still meet the long-standing community criteria. For example, the community must have clearly defined geographic boundaries that are recognized as a distinct neighborhood, community, or rural district. However, the documentation required to demonstrate that the proposed service area is a well-defined community has been streamlined. This will greatly facilitate the expeditious processing of community charters.

The ''well defined neighborhood, community or rural district'' requirement will automatically be met if the area to be served is in a single political jurisdiction or portion thereof, and if the population of the requested political jurisdiction does not exceed 1,000,000. If the area to be served is not contained within a single political jurisdiction or if the population of the area exceeds 1,000,000, then more detailed documentation is necessary to support that the proposed area is a well-defined community. Generally, the political subdivision will most often coincide with a ''county'', or its political equivalent, and any portion thereof.

Except as noted below, a credit union seeking a community charter must contact all the credit unions with a service facility in the proposed service area. The applicant credit union should provide the comments of any overlapped credit unions in the area, and the regional director will conduct a standard overlap analysis. An overlap analysis may result in denial of the charter, change in the community boundaries, or use of exclusionary clauses. Documentation reflecting support for the charter application is still required, except as noted below.

Second, while NCUA traditionally has interpreted the field of membership authority for ''groups within a well-defined neighborhood, community, or rural district'' to encompass all groups within that community, a subset of a community charter credit union (called ''group community'') is now authorized. This type of community charter is available to those wishing to serve specific occupational, associational, and community groups within a well-defined neighborhood, community, or rural district. The requirements for a group community parallel those required of a community charter. However, if a multiple group credit union is converting to a group community, then a business plan, overlap analysis, and evidence of community support is not required.

Upon converting to a group community charter, the credit union will immediately recover the ability to add new members from all groups that were previously served by the credit union (i.e., at the time of the Order) and that are located within the community. New members from existing groups outside the community cannot be served by the group community. To add new groups from within the community, the credit union must receive prior approval by submitting an application to the

regional director documenting that the group is within the community, the group has provided a written request for service, and whether the group presently has credit union service available.

If the credit union wishes to add a group that was previously served by another credit union, but has lost service as a result of the court decisions concerning common bond, the federal credit union wishing to add the group must consult with the other credit union and provide the results of that consultation in its application to NCUA. A determination as to whether that group can be added will be made based on a review of any safety and soundness concerns and the needs of the group.

Associational Common Bonds

No amendments to the associational common bond requirements are included in this interim policy. After review of the associational common bond requirements in IRPS 94–1 as amended by IRPS 96–1, the Board determined that the policy allows for many types of associations to qualify as eligible groups. However, any associational credit union with multiple groups must designate a core common bond.

Emergency Mergers

NCUA is issuing clarifying amendments to the provisions concerning emergency mergers and purchase and assumptions consistent with the Order and Decision. Further, NCUA is removing the 12 month insolvency limitation since it is not required by the Federal Credit Union Act.

Regional Action

This policy is not self-executing. Credit Unions must receive the approval of NCUA before restructuring their fields of membership to serve either specified groups within a single common bond of ''trade, industry, or profession'' or specified groups within a ''well-defined community.'' Once approval is granted by NCUA, a federal credit union can serve new members from all of its previously approved groups that fall within the newly defined field of membership.

Effective Date; Interim Rule; Comment Period

Although this amendment is being issued as an interim final rule and is effective immediately, the NCUA Board encourages interested parties to submit comments. Comments may be submitted on or before February 1, 1997.

Federal credit unions are suffering irreparable injury due to the injunction issued in the consolidated cases of *First National Bank and Trust Co., et al.* and the *American Bankers Association* v. *NCUA, et al.* Since 1982, federal credit unions have been permitted to diversify their membership base through the addition of select groups. This ability has strengthened federal credit unions and reduced losses to the NCUSIF and extended credit union service to millions of persons who would not otherwise be eligible to join a credit union.

The inability to add new members from existing select groups effectively begins the process of divesting those groups from the credit union. This has an immediate effect of cutting off service to millions of potential members and adversely affecting credit unions. This adverse effect on credit unions poses potential safety and soundness concerns with respect to the National Credit Union Share Insurance Fund.

Therefore, the Board finds it is necessary and appropriate to act expeditiously in this matter in order to allow credit unions to partially restructure their fields of membership. If this rule is not effective immediately, credit unions and their members will continue to be adversely impacted. Accordingly, the Board for good cause finds that (i) pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedure are impracticable, unnecessary, and contrary to the public interest, and (ii) pursuant to 5 U.S.C. 553(d)(3), the rule shall be effective immediately and without 30 days advance notice or publication. Further, NCUA has determined that this is not a major rule under 5 U.S.C. Chapter 8, and shall be effective immediately.

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). This interim rule 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

NCUA has determined that the amendments do not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget (OMB). 60 FR 44978 (August 29, 1995).

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. This interim regulation makes no significant changes with respect to state credit unions and therefore, will not materially affect state interests.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 14, 1996.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 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 31 U.S.C. 3717. Section 701.31 is also authorized by 12 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 practice and procedure concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 94–1 Chartering and Field of Membership Policy (IRPS 94–1) as amended by IRPS 96–1 and IRPS 96–2. 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 94–1) does not and the following amendments will not appear in the Code of Federal Regulations.

3. In IRPS 94–1, Chapter 1, Section II.A is revised to read as follows:

II.A.—Occupational Common Bonds

II.A.1—General

A federal credit union may include in a single occupational common bond, any and all persons who share that common bond. NCUA permits a person's membership eligibility in an occupational common bond 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 occupational common bond of employees of the entity;

• Employment in a corporation or other legal entity with an ownership interest in or by another legal entity makes that person part of occupational common bond of employees of the two legal entities;

• 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 an occupational common bond of employees of the two entities; or

• Employment based on a trade, industry, or profession.

An occupational common bond based on a trade, industry, or profession must include a geographic limitation. This limitation does not apply to any other occupational common bonds. However, a proposed or existing federal credit union may limit its field of membership to a specific geographic area.

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.

The corporate or other legal entity (i.e., the employer) may also be included in the common bond—e.g., ''ABC Corporation and its subsidiaries.'' The corporation or legal entity will be defined in the last clause in Section 5 of the credit union's charter.

Some examples of single occupational common bonds are:

• Employees of the Scott Manufacturing Company who work in Chester, Pennsylvania. (common bond—same employer);

• Employees of the Scott Manufacturing Company. (common bond—same employer without geographic limitation);

• Employees, elected and appointed officials of municipal government in Parma, Ohio. (common bond—same employer with geographic limitation);

• Employees of the federal government. (common bond—single sponsor);

• Employees of Johnson Soap Company and its subsidiary, Johnson Toothpaste Company, who work in Augusta and Portland, Maine. (common bond—parent and subsidiary company with geographic limitation);

• Employees of the Department of Defense—civilian and U.S. Army. (common bond—same employer without geographic limitation);

• Employees of those contractors who work regularly at the U.S. Naval Shipyard in Bremerton, Washington. (common bond—employees of contractors with geographic limitation);

• Employees, doctors, medical staff, technicians, medical and nursing students who work in or are paid from Boston Medical Center. (single corporation); or

• Employees of JKL, Incorporated and STU, Incorporated working for the XYZ Joint Venture Company in Los Gatos, California. (common bond—same employer—ongoing dependent relationship).

Some examples of insufficiently defined single occupational groups are:

• Employees of manufacturing firms in Seattle, Washington. (no defined sponsor or industry);

• Persons employed or working in Chicago, Illinois. (no occupational common bond); or

• Employees of all colleges and universities in the State of Texas. (not a single occupational common bond; although this may qualify as an occupational common bond based on trade).

II.A.2—Trade, Industry, or Profession

A common bond based on employment in a trade, industry, or profession can include employment at any number of corporations or other legal entities that—while not under common ownership—have a common bond by virtue of producing similar products or providing similar services. Because this type of common bond is the most expansive and has overlap implications, a geographic limitation is required. In general, a geographic limitation corresponds to the credit union's operational area. Also, each employee group to be served must be separately listed in Section 5 of the credit union charter.

While proposed or existing credit unions have some latitude in defining a trade, industry, or profession occupational common bond, it can not be defined so broadly as to include groups in fields which are not closely related. For example, all textile workers or all government employees in a limited geographic area (including federal, state, and local) may qualify under this category. However, employees of all manufacturing companies would not. The common bond relationship must be one that demonstrates a commonality of interests within a specific trade, industry, or profession. More than one federal credit union may serve the same trade, industry, or profession.

Some examples of trade, industry, or profession common bonds are:

• Employees and teachers who work for universities and colleges in Austin, Texas. (same profession; acceptable if within the credit union's operational area);

• All persons working in the educational system in Atlanta, Georgia. (same trade, acceptable if within the credit union's operational area);

• Employees of the federal, state, and municipal governments in Fairfax County, Virginia. (same industry; acceptable with a geographic limitation, i.e., within the credit union's operational area);

• Employees of the coal mining industry in Erie County, Pennsylvania. (same industry; acceptable if within the credit union's operational area); or

• Persons working as Certified Public Accountants in Los Angeles, California. (same profession; acceptable if within the credit union's operational area).

Some examples of insufficiently defined trade, industry, or profession common bonds are:

• Employees and teachers who work for public schools. (same trade, but no geographic limitation); or

• Employed persons in Maryland. (no common bond—no specified trade).

II.A.3—Common Bond Amendments

II.A.3.a—Designation of Common Bond

The chartering and field of membership policies effective prior to the implementation of this interim policy statement allowed for the combination of multiple select groups that did not share the same common endeavor, purpose or interest to form a single credit union. These policies have been suspended. Accordingly, It is now necessary for those federal credit unions that were chartered, or expanded their field of membership pursuant to the multiple select group policies, to designate a core field of membership, i.e., a common bond. Credit unions must designate a core common bond by March 1, 1997. If a credit union fails to designate its core common bond, NCUA will designate the original core group as its common bond.

The core common bond can be defined as the employee group that constituted the field of membership, i.e., its core group, at the time of charter. The core common bond can also be defined as any group in the credit union's field of membership, including a common bond of trade, industry, or profession. If a group other than the one that constituted the core common bond at the time of charter is designated as the core common bond, then the newly designated core common bond must receive NCUA's concurrence. To change the core common bond the credit union must submit a written request to NCUA for approval. The designation of a core common bond does not apply to community charters.

The designation of a core common bond is critical for the following reasons:

• New members can be accepted only from the designated core common bond;

• Future field of membership expansions will be based on the designated core common bond;

• Only members of record, as of October 25, 1996, of select groups that do not have the same designated core common bond can continue to be served; and

• Once a core common bond has been designated, it can not be changed. However, in those cases where there is a valid safety and soundness concern or a different common bond group is acquired as a result of an emergency merger, the credit union may request a new designation.

II.A.3.b—Documentation Requirements

A charter applicant or existing occupational federal credit union that submits a request to amend its charter to add new groups must provide documentation to establish that the occupational common bond requirement has been met.

All amendments to an occupational common bond credit union's field of membership, except the designation of the original core common bond, must be approved by the regional director. The regional director may approve an amendment to expand the field of membership if:

• The common bond requirements of this section are satisfied;

• The group to be added has provided a written request for service to the credit union;

• The group presently does not have credit union service available (if credit union service is available, the region must conduct an overlap analysis), other than through a community credit union; and

• The occupational common bond is based on a trade, industry, or profession only if the group is within the operational area of one of the credit union's service facilities.

If the credit union wishes to add a group that was previously served by another credit union, but has lost service as a result of the court decisions concerning common bond, the federal credit union wishing to add the group must consult with the other credit union and provide the results of that consultation in its application to NCUA. A determination as to whether that group can be added will be made based on a review of any safety and soundness concerns and the needs of the group.

4. In IRPS 94–1, Chapter 1, Section II.C is revised to read as follows:

II.C—Community Charters

II.C.1—General

A community credit union is permitted to serve persons who live in, worship in, go to school in, or work in a ''well-defined neighborhood, community or rural district.'' A subset of a community charter is a group community, which permits a credit union to serve specific occupational, associational, and community groups within that same well defined area. Although there are differences in documentation requirements for a group community charter, the definition of a ''well defined neighborhood, community or rural district'' is the same.

II.C.2—General Community Charter Criteria

NCUA policy is to limit a community to a single, geographically well-defined area where residents have common interests or interact. NCUA recognizes four types of affinity on which a community common bond can be based—persons who live in, worship in, go to school in, or work in the community. Businesses and other legal entities within the community boundaries may also qualify for membership. More than one community credit union may serve the same community area.

Given the diversity of community characteristics throughout the country and NCUA's goal of making credit union service available to all eligible groups, NCUA has established the following requirements for community charters:

• The geographic area's boundaries must be clearly defined; and

• The charter applicant must establish that the area is recognized as a well defined ''neighborhood, community, or rural district.''

Some examples of community charter definitions are:

• Persons who live, work, worship, or go to school in, and businesses located in the area of XYZ City bounded by Fern Street on the north, Long Street on the east, Fourth Street on the south, and Elm Avenue on the west.

• Persons who live or work in Green County, Maine.

• Persons who live, worship, go to school in, or work in and businesses and other legal entities located in Independent School District No. 1, DuPage County, Illinois.

Some examples of insufficiently defined community charter definitions are:

• Persons who live or work within and businesses located within a ten-mile radius of Washington, D.C. (Not a recognized neighborhood, community, or rural district).

• Persons who live or work in the industrial section of New York, New York. (No clearly defined boundaries).

II.C.3—Documentation Requirements for a Community Charter

For a community charter, any political jurisdiction or portion thereof, excluding state boundaries, automatically qualifies as a well-defined community, if the population of the requested political jurisdiction does not exceed 1,000,000. If the area to be served is not contained within a single political jurisdiction, or if the population of the area to be served exceeds 1,000,000, the credit union should provide to NCUA for approval, if available, the following documentation to support that it is a well-defined community:

• 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 areas to be served;

• Common characteristics and background of residents (for example, income, religious beliefs, primary ethnic groups, similarity of occupations, household types, primary age group, etc.); and

• History of area.

Except for a group community, the following information must be provided to support a need for a community credit union:

• A list of credit unions presently in area and evidence that these credit unions were contacted regarding the community charter. If available, provide the opinion of the overlapped credit unions; and

• Written documentation reflecting support for the charter application, field of membership expansion, or conversion to a community credit union. This may be in the form of letters, surveys, studies, pledges, or a petition. Other types of evidence may also be acceptable.

II.C.4—Business Plan

Business plans are required of all credit unions expanding their community boundaries or converting to a community charter (except for a credit union converting to a group community). The business plan for a community federal credit union should comply with the requirements of Chapter 1, Section IV.A.4.b, except that a summary of survey results is not required.

II.C.5—Community Service Area

The service area for a community federal credit union is the area defined in its charter usually with north, south, east, and west boundaries. If the community is a recognized political jurisdiction, the service area may be defined by the applicable political jurisdiction, such as ''DEF Township, Kansas'' or ''GHI County, Minnesota.''

II.C.6—Group Community

A group community charter is available to those wishing to serve specific occupational, associational, and community groups within a well-defined neighborhood, community, or rural district.

An example of a group community common bond definition is:

• The following groups within Smithson County, Pennsylvania: Employees of HAC Corporation and Smith and Wesson Firearms, who work in Smithson County, Pennsylvania; members of the Greater Smithson County Ruritan Club who qualify for membership in accordance with its bylaws in effect on November 9, 1996; members of the First Amish Church in Smithson County, Pennsylvania; members of the National Rifle Association in Smithson County, Pennsylvania, who qualify for membership in accordance with its bylaws in effect on November 9, 1996; and members of the Greystone Electric Membership Cooperative in Smithson County, Pennsylvania.

A group community charter must receive regional director approval to expand its field of membership to include new groups within that community. The regional director may approve the amendment if the request supports:

• The group is within the defined geographical area;

• The group has provided a written request for service to the credit union; and

• Whether the group presently has credit union service available from an occupational or associational credit union.

If the credit union wishes to add a group that was previously served by another credit union, but has lost service as a result of the court decisions concerning common bond, the federal credit union wishing to add the group must consult with the other credit union and provide the results of that consultation in its application to NCUA. A determination as to whether that group can be added will be made based on a review of any safety and soundness concerns and the needs of the group.

5. In IRPS 94–1, Chapter 2, Section III.B is amended by removing the words ''within 12 months'' and adding a new paragraph at the end of the section to read as follows:

III.B. * * *

If the continuing and merging credit union do not have the same core common bond, then the continuing credit union's core common bond will be controlling for future common bond expansions. However, the continuing credit union may, at the time of the emergency merger, request a redesignation to the merging credit union's core common bond. Subsequent field of membership expansions must be based on a single designated core common bond.

However, the continuing credit union may serve new members of the merging credit union's core common bond and members of record as of October 25, 1996, of the non-core common bond groups.

6. In IRPS 94–1, Chapter 2, Section III.C is amended by adding a new paragraph at the end of the section to read as follows:

III.C. * * *

If the continuing and the purchased and assumed credit unions do not have the same common bond, then the continuing credit union's core common bond will be controlling for future common bond expansions. However, the continuing credit union may, at the time of the P&A, request a redesignation to the purchased and assumed credit union's core common bond if the P&A meets the emergency merger criteria. Subsequent field of membership expansions must be based on a single designated common bond. However, the continuing credit union may serve new members of the purchased and assumed credit union's core common bond and members of record as of October 25, 1996, of the non-core common bond groups.

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 950

[No. 96–80]

Revision of Financing Corporation Operations Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule with request for comments.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation on Financing Corporation (FICO) operations to comply with new statutory requirements and to eliminate provisions that have been rendered obsolete by statutory changes. The interim final rule is consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review.

DATES: The interim final rule will become effective on November 22, 1996. The Finance Board will accept comments on the interim final rule in writing on or before December 23, 1996.

ADDRESSES: Mail comments to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Christine M. Freidel, Assistant Director, Financial Management Division, Office of Policy, 202/408–2976, or Janice A. Kaye, Attorney-Advisor, Office of General Counsel, 202/408–2505, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

A. FICO Obligations

The Federal Savings and Loan Insurance Corporation (FSLIC) Recapitalization Act of 1987 amended the Federal Home Loan Bank Act (Bank Act) by adding a new section 21 directing the establishment of FICO. *See* Public Law 100–86, Title III, section 302, 101 Stat. 585 (Aug. 10, 1987), *codified at* 12 U.S.C. 1441. On August 28, 1987, the Finance Board's predecessor, the former Federal Home Loan Bank Board (FHLBB), chartered FICO to recapitalize the former FSLIC. To raise funds for that purpose, Congress authorized FICO to issue up to $10.825 billion in public debt. *See* 12 U.S.C. 1441(e)(1) (1987) (superseded). From 1987 to 1989, FICO issued $8.17 billion in 30-year obligations, the proceeds of which were used to resolve failed savings associations. Congress terminated FICO's debt issuance authority in 1991, effectively capping FICO's borrowings at the then outstanding $8.17 billion in obligations.[1]

To assure repayment of the $8.17 billion principal amount of the FICO obligations, section 21(g)(2) of the Bank Act requires FICO to invest in, and hold in a segregated account, certain enumerated securities that will have a principal amount payable at maturity approximately equal to the aggregate amount of principal on the FICO obligations. *See* 12 U.S.C. 1441(g)(2). Accordingly, the principal on FICO bonds was defeased by using Federal Home Loan Bank (FHLBank) retained earnings to purchase 30-year zero coupon United States Treasury securities that have a face value sufficient to retire the FICO bonds at maturity. These securities currently are held in a segregated account at the Federal Reserve Bank of New York.

B. FICO Expenses

Pursuant to section 21 of the Bank Act, FICO may incur two categories of expenses: (1) administrative expenses, which include general office and operating expenses, and (2) non-administrative expenses, which include the almost $800 million in interest due each year until maturity of the last FICO obligation, issuance costs, and custodian fees. *See id.* 1441(b)(7), (f)(2), (g)(5). The FHLBanks pay FICO's administrative expenses in accordance with a statutory formula based on the percentage of FICO stock held by each FHLBank. *See id.* 1441(b)(7).

There are four statutory sources of funds to pay FICO's non-administrative expenses. Under section 21(f)(1) of the Bank Act, FICO has authority to use assessments previously assessed against insured institutions (*i.e.*, FSLIC-insured thrifts) under the special assessment provisions that were in effect prior to enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). *See id.* 1441(f)(1), 1441(f) (1987 superseded); Public Law 101–73, Title V, section 512(13), 103 Stat. 406 (Aug. 9, 1989). Funds from this source have been exhausted and are no longer available.

To the extent pre-FIRREA assessments are insufficient to cover FICO's non-administrative expenses, under section 21(f)(2) of the Bank Act, FICO has first priority to impose and collect assessments against each Savings Association Insurance Fund (SAIF) member that is a savings association. *See* 12 U.S.C. 1441(f)(2) (1996). FICO's assessment authority is subject to the approval of the Board of Directors of the Federal Deposit Insurance Corporation (FDIC), and must be made in the same manner as assessments are made by the FDIC. *Id.* To date, FICO's assessments on SAIF member savings associations have been the major or sole source of revenue to pay FICO's non-administrative expenses, *i.e.*, FICO's interest, issuance, and custodial costs.

Effective January 1, 1997, the Deposit Insurance Funds Act of 1996 (Funds Act) amends FICO's assessment authority under section 21(f)(2) of the Bank Act. *See* Public Law 104–208, Title II, Subtitle G, 110 Stat. 3009 (Sept. 30, 1996). Section 2702 of the Funds Act eliminates the provision granting FICO first priority to make assessments and changes FICO's assessment base from all SAIF member savings associations to all depository institutions insured by the FDIC. *See* 12 U.S.C. 1441(f)(2) (1997). Beginning with the first assessment in 1997, FICO has authority, with the approval of the Board of Directors of the FDIC, to assess all insured depository institutions to cover the interest payments due on FICO obligations and FICO's issuance costs and custodian fees. *Id.* However, until the earlier of

[1] *See* Pub. L. 102–233, Title I, section 104, 105 Stat. 1762 (Dec. 12, 1991), *codified at* 12 U.S.C. 1441(e)(2). Fifteen percent of the outstanding FICO bond principal matures in the year 2017, 57 percent matures in 2018, and the remaining 28 percent matures in 2019. *See* General Accounting Office, *Deposit Insurance Funds Report,* 11 n.5 (Mar. 1995).