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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 704

Corporate Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its regulations governing corporate credit unions to reduce the close ties between many corporate credit unions and credit union trade associations. The final rule requires that at least a majority of a corporate credit union's directors, including the chair, be representatives of member credit unions. The rule provides that a majority of a corporate credit union's directors may not be individuals who also serve as officers, directors, or employees of the same trade association or affiliated trade associations. The rule requires that the chief executive officer of a corporate credit union answer solely to the board of directors and not also serve as an employee of a trade association. While the rule imposes these and other requirements to ensure corporate credit union governance is controlled by member credit unions, substantial revisions from the Board's earlier proposed rule have been made to address concerns raised by commenters.

EFFECTIVE DATE: January 1, 1996.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT: H. Allen Carver, Director, Office of Corporate Credit Unions, (703) 518–6640, or Robert M. Fenner, General Counsel, (703) 518–6540, at the above address.

SUPPLEMENTARY INFORMATION:

A. Background

On April 12, 1994, the NCUA Board issued an advance notice of proposed rulemaking (ANPR) regarding the relationship between corporate credit unions and credit union leagues and trade associations. 59 FR 18503, April 19, 1994. The ANPR noted that approximately half of the corporate credit unions are closely tied to leagues and trade associations, through integrated boards or management relationships. The ANPR requested comment on whether Part 704 should be amended to require that the board of directors of a corporate credit union be independently elected by its members, with the condition that a majority of the board seats be held by representatives of member credit unions, that all or a majority of the corporate credit union board be comprised of representatives who do not also serve on the board of a league or trade association, and that management of a corporate credit union report solely to the board of the corporate credit union.

NCUA received 400 comment letters in response to the ANPR, 115 expressing general support for the proposed changes, 278 expressing general opposition, and 7 commenting on tangential issues. Remaining concerned that a corporate credit union system independent of trade association control is important to the safety and soundness of the credit union system, the Board determined to request comment on specific proposed changes. Accordingly, on September 16, 1994, the Board issued a notice of proposed rulemaking. 59 FR 48832, September 23, 1994.

It was proposed that the definition of "corporate credit union" be amended by providing that a corporate credit union could not require its members to belong to any other organization. It was proposed that at least a majority of a corporate credit union's directors, including the chair, be individuals who represented member credit unions and who were not officers, directors, or employees of a credit union-related organization. "Credit union-related organization" was proposed to be defined as a credit union league or trade association, an affiliate of a credit union league or trade association, or an entity operated or controlled by a credit union league, trade association, or affiliate. For purposes of meeting the required majority, it was proposed that an individual be prohibited from serving as a director of a corporate credit union if another individual from his or her credit union was serving as an officer, director, or employee of a credit union-related organization.

To implement the existing requirement that elections be conducted by mail ballot, revisions were proposed to the standard corporate federal credit union bylaws. In addition, it was proposed that state chartered corporate credit unions be required to comply with those bylaws. It was proposed that if an individual ceased to be the representative of an organization for any reason, his or her seat would be declared vacant and filled by the corporate credit union board in accordance with the bylaws. Finally, it was proposed that the recusal provision be strengthened, that management report solely to the board, and that no management official or other employee of a corporate credit union could be an employee or official of a credit union-related organization.

B. Comments

NCUA received 417 comments on the proposed rule: 330 from natural person credit unions, 29 from corporate credit unions, 33 from credit union trade associations, 10 from state regulatory agencies, 10 from individuals, 3 from central credit unions, 1 from a chapter of a state league, and 1 from a bank trade association. Of the commenters 291 were opposed to any NCUA regulation in the area of corporate credit union governance, 95 supported some regulation in that area but stated that the proposed regulation went too far, and 31 supported the proposed regulation with no or only minor modifications.

Many of the commenters who objected to any regulation in the area of corporate credit union governance expressed the view that the Board should not go forward with a proposed regulation in the face of opposition by the majority of commenters on the ANPR. Some suggested that the decision to go forward was an indication that the Board did not bother to consider the comments and that commenting was useless. In fact, the Board took very seriously the comments of interested parties, and relied on them to produce what it considers to be a better product. The regulatory process, while allowing

interested parties to participate in rule making through submission of written data, views, and arguments, does not bind the Board to abide by such submissions. Having solicited comments, the Board, as an independent regulatory body, must then act in its best judgment to establish policies that it believes will ensure the safety and soundness of federally chartered and insured credit unions.

The Board has concluded that because the interests of trade associations (which are basically political organizations) and financial institutions often conflict, trade association control of a corporate credit union can cause, and in several instances has caused, improper allocation of corporate resources. By this rule, the Board seeks to position corporate credit unions to remain free of conflicts of interest and to avoid the appearance of such conflicts that could diminish public confidence in the credit union system.

The commenters on the proposed rule who objected to any regulation on interlocks did so primarily on the basis that corporate credit union governance is not a safety and soundness issue. The fact is that trade association control of corporate credit unions is a safety and soundness issue. Less than arms length financial transactions, and problems of financial and fiduciary accountability and control in corporate credit unions with close board and management ties to trade associations, can affect resource allocation decisions. The Board is well aware of several instances where such misallocations have occurred. To prevent both the real and apparent conflicts of interest, the Board has determined that regulatory changes are in order.

The commenters who were in favor of some regulation in the area of corporate credit union governance tended to believe that the proposed regulation was on the right track but that some of its provisions were too broad. The commenters argued that the proposed rule could be modified and still meet the goal of eliminating trade association control of corporate credit unions. The Board agrees and has amended the proposed rule as discussed below.

C. Section-by-Section Analysis

Section 704.2 Definitions

The final rule retains the proposed addition to the definition of "corporate credit union": the requirement that a corporate credit union may not condition a credit union's eligibility to join the corporate credit union on that credit union's membership in any other organization. Most of the commenters who favored some regulation in this area supported the amendment. In a first step in providing a clearer definition of what a corporate credit union is, the final rule also adds two new elements to the definition. These are that a corporate credit union is chartered by state or federal law as a credit union and that it provides share and loan services to other credit unions.

Among the commenters who favored some regulation, many suggested that the term "credit union-related organization" was confusing. Accordingly, that term has been eliminated and replaced with the term "trade association," which is defined in the final rule to include entities owned or controlled directly or indirectly by a trade association. When used in the regulation, "trade association" is modified by the words "credit union." "Credit union trade association" includes, but is not necessarily limited to, state credit union leagues and league service corporations, national credit union trade associations and their affiliates and service organizations, and local, state, and national special interest credit union associations and organizations.

Section 704.12(a) Board Representation

The proposed rule provided that the board was to be determined as stipulated in the standard federal corporate credit union bylaws. Some commenters objected to requiring state chartered corporate credit unions to comply with federal bylaws. The Board is sensitive to state interests but believes it is critical that each corporate credit union follow election procedures that will provide an opportunity for full participation by all members. At the same time, the Board does not wish to intrude unnecessarily on a state's prerogative, so the final rule makes clear that state chartered corporate credit unions need only follow the federal bylaws which govern elections. These would be the notice provisions of Article IV, Section 2, and Article V, both as amended in the final rule. Since these bylaws provide for elections by mail ballot, with procedures for nominations by petition, Section 704.12(a)(2) of the proposed rule has been deleted as unnecessary.

In response to comments, the Board has also substantially revised the other elements of proposed Section 704.12(a). The Board agrees that proposed Section 704.12(a) went beyond preventing trade association control and in fact prevented individuals who serve on the corporate credit union board from serving in other capacities in the credit union system and, in addition, prevented other individuals from their credit unions from serving in the system.

Since corporate credit unions should exist to serve the interests of natural person credit unions and their members, Section 704.12(a)(1) of the final rule retains the requirement that a majority of corporate credit union board members, including the chair, must be representatives of member credit unions. Section 704.12(a)(2) of the final rule, however, only prohibits the board chair from serving in a trade association, on the theory that the chair should be an individual whose loyalty is in no way divided between the corporate credit union and a trade association.

Rather than prohibiting the majority of board members who represent member credit unions from any service in the credit union system, Section 704.12(a)(3) of the final rule simply prohibits a majority of board members from serving with a given credit union trade association or its affiliates, excluding chapters. The Board believes that a corporate credit union's board should not be controlled or overly influenced by individuals who represent a particular trade association.

League chapters were excluded from the restriction because individuals serving as officers of such chapters generally are not involved in setting policy or making decisions for the league. Individuals who serve on league committees are likewise excluded because the regulation only applies to officers, directors, and employees of a trade association. The proposed prohibition against a majority of board members serving as "agents" of a trade association has been deleted. The provision was unclear in its meaning and unnecessary, given the rule against a majority serving as officers, directors, or employees of the same or affiliated trade associations.

State leagues that are members of the Credit Union National Association (CUNA) are considered to be affiliated with CUNA and with each other. Thus, for example, a five-member corporate credit union board could not have two members who serve on the boards of different state leagues and one member who serves on the board of CUNA. A five-member board could, however, have two members who serve on the boards of different state leagues, and one member who serves on the board of another, unaffiliated trade association. Thus, individual leaders in the credit union system would retain the ability to serve in various capacities, but a corporate credit union could not be dominated by a given trade group.

Section 704.12(a)(4) of the final rule operates to prevent the limitations of paragraphs (2) and (3) from being circumvented by placing a senior employee of a credit union on a trade association board and a subordinate employee of the same credit union on a corporate credit union board. For example, again in the case of a corporate credit union with a five-member board, it would not be permissible to have the following combination of board members: one corporate board member who also serves on the board of CUNA, one board member who also serves on the board of a state league, and one corporate board member who is an employee of a credit union whose CEO serves on the board of a state league. This same example would become permissible, however, if the credit union CEO were on the corporate credit union board and the vice president were on the league board, or if either or both of the two individuals were board members at their natural person credit union instead of employees. This distinction is based on the belief that only superior to subordinate employee relationships result in the kind of domination that would subvert the rule.

Section 704.12(a)(5) of the final rule is a new requirement which provides that in the case of any corporate credit union whose membership is comprised of more than 25% non credit unions, the majority of directors representing member credit unions must be elected only by those member credit unions. At least 80% of the membership of all corporate credit unions but U.S. Central consists of credit unions. Approximately 60% of U.S. Central's membership, however, consists of individuals or organizations that are not credit unions and that, for the most part, are officials or affiliates of CUNA, CUNA Mutual, the World Council of Credit Unions, and the leagues. In the absence of some special rule for U.S. Central, this majority would be able to elect, to the majority of board seats that must be held by representatives of member credit unions, representatives of their choosing, thus removing control from U.S. Central's member credit unions.

Other than requiring the use of the bylaw provisions regarding mail ballots and nomination by petition, the Board will not prescribe specific procedures for achieving the requirements of Section 704.12(a). Each corporate credit union has the freedom to develop its own election procedures, subject to the requirements of the rule and the bylaws.

Section 704.12(b) Representatives of Organizational Members

Proposed Section 704.12(b) has been carried through to the final rule with the addition of a sentence clarifying that an organizational member of a corporate credit union is a member that is not a natural person. In response to comments, proposed Section 704.12(b)(2) has been amended to make it clear that in filling vacancies, the board of a state chartered corporate credit union is free to use the credit union's own bylaws, as long as the substantive requirements of the rule are met.

Section 704.12(c) Recusal Provision

Again, most commenters who supported regulation in the area of corporate credit union governance agreed with the proposal to require recusal for all matters involving the pecuniary interest of an organization in which a corporate official is interested, rather than just matters where the amount in question exceeds 5% of the corporate's capital. The final rule makes this change. As noted in the supplementary information section of the proposed rule, a healthy and independent credit union movement depends, in part, on preventing even the appearance of conflicts of interest. A strong recusal provision is necessary to achieve this goal. Under the recusal provision, an individual who is interested in a matter may not deliberate or vote on the matter, or otherwise attempt to influence its outcome.

The final rule has been amended to clarify that the recusal provision does not apply when the matter involves general policy applicable to all members, rather than a specific action regarding one member. In addition, the word "agent" has been deleted as being vague and potentially overly broad.

The proposed definition of "interested" has been made final, with the clarification that recusal is only required when a director, committee member, officer, or employee of a corporate credit union has a relationship with someone and knows that that person has in interest in an entity whose interest will be affected by an action of the corporate credit union.

Section 704.12(d) Administration

Section 704.12(d) of the proposed rule required the management official of the corporate credit union to report solely to the board and prohibited any management official, officer, agent, or employee of the corporate credit union from being a management official, officer, agent, or employee of a trade association. In response to comments, the final rule prohibits only the chief executive officer of a corporate credit union from serving as an employee of a trade association.

The provision was narrowed because of the criticism that prohibiting sharing of employees and resources with leagues or other organizations would put small corporate credit unions out of existence. It was argued that small corporate credit unions have a place in the future of the credit union system because large, regional or national corporate credit unions may not devote as much time and resources to providing service to small natural person credit unions. To address this concern, the final rule does not prohibit sharing of employees below the level of the chief executive officer of the corporate credit union. The CEO of the corporate credit union, who may not be an employee of a trade association, must report to the corporate board, which cannot be dominated by persons associated with any given trade association. With those restrictions in place, a corporate credit union should be allowed, based on its business judgment, to share employees and other resources with any other organization.

To clarify that the provision applies to the top paid employee of the corporate credit union, not the chair of the board, the final rule substitutes "chief executive officer" for "management official."

As discussed earlier, Section 704.12(e), the definition of "credit union-related organization," has been deleted from the final rule.

D. Applicability to State Chartered Corporate Credit Unions

The final rule applies to all federally insured corporate credit unions. (Non federally insured corporate credit unions must comply with the rule in order to receive funds from federal credit unions.) The Board acknowledges the strong sentiment against NCUA applying this rule to state chartered corporate credit unions. The Board's rationale for applying this rule to such credit unions is provided in the analysis of Executive Order 12612, set forth below.

E. Effective Date

This rule will not take effect until January 1, 1996. Board members in the midst of their terms on that date need not leave the board, even if that means the corporate credit union does not meet Section 704.12(a) of the rule. Elections held after the effective date, however, must be conducted so as to bring the corporate credit union into compliance

with the regulation. For example, on a nine-person board where each member serves as a director of Trade Association A, members serve three-year terms, and three members are elected each year, the three individuals elected in 1996 must not serve as officers, directors, or employees of Trade Association A or its affiliates. Two of the individuals elected in 1997 also must not serve in those capacities for the trade association. At that time, the majority of the board will not be serving as officers, directors, or employees of the same or affiliated trade association, a condition which must be maintained in subsequent elections. The requirement for an independent chair of the board would have to be met at the earliest possible date, the 1996 election in this example.

Corporate credit unions must come into compliance with the other provisions of the rule on the effective date.

F. Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that the final rule will not have a significant economic impact on small credit unions (those under $1 million in assets). The rule applies only to corporate credit unions, all of which have assets well in excess of $1 million. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The final rule does not impose any paperwork requirements.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. It states, "Federal action limiting the policy-making discretion of the states should be taken only where constitutional authority for the action is clear and certain, and the national activity is necessitated by the presence of a problem of national scope." The risk of loss to federally insured credit unions and the NCUSIF caused by actions of corporate credit unions are concerns of national scope. The final rule will help ensure that proper safeguards are in place to ensure the safety and soundness of corporate credit unions.

The rule applies to all federally insured corporate credit unions, including those that are state-chartered. State-chartered corporate credit unions enjoy the same benefits provided by the NCUSIF as do federally chartered corporate credit unions. The benefits are provided through a federal system, the responsibility for which lies with the NCUA Board. The Board believes that those who benefit from the system should bear its burdens equally. The rule also affects, indirectly, non federally insured state-chartered corporate credit unions, which, pursuant to 12 CFR Part 703, must comply with the rule in order to receive funds from federally chartered credit unions. The final rule does not impose additional costs or burdens on the states or affect the states' ability to discharge traditional state government functions.

The Board has determined, pursuant to Executive Order 12612, that the final rule may have an occasional direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Further, the final amendments may supersede provisions of state law or regulation concerning federally insured state-chartered corporate credit unions.

List of Subjects in 12 CFR Part 704

Credit unions, Reporting and record keeping requirements.

By the National Credit Union Administration Board on November 10, 1994.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, 12 CFR part 704 is amended as follows:

PART 704—CORPORATE CREDIT UNIONS

1. The authority citation for part 704 continues to read as follows:

Authority: 12 U.S.C. 1762, 1766(a), 1781, and 1789.

2. Section 704.2 is amended by removing the definition of *Affiliated organization*, revising the definition of *Corporate credit union*, and adding in alphabetical order the definition of *Trade association*, to read as follows:

§ 704.2 Definitions.

* * * * *

Corporate credit union means an organization that:

(1) Is chartered under Federal or state law as a credit union;

(2) Receives shares from and provides loan services to other credit unions;

(3) Is operated primarily for the purpose of serving other credit unions;

(4) Is designated by the National Credit Union Administration as a corporate credit union;

(5) Limits natural person members to the minimum required by state or federal law to charter and operate the credit union; and

(6) Does not condition the eligibility of any credit union to become a member on that credit union's membership in any other organization.

* * * * *

Trade association means an association of organizations or persons formed to promote their common interests. The term includes entities owned or controlled directly or indirectly by such an association but does not include credit unions.

* * * * *

3. Section 704.12 is revised to read as follows:

§ 704.12 Representation.

(a) *Board representation.* The board shall be determined as stipulated in the standard corporate federal credit union bylaws governing election procedures, provided that:

(1) At least a majority of directors, including the chair of the board, must serve on the board as representatives of member credit unions;

(2) The chair of the board may not serve simultaneously as an officer, director, or employee of a credit union trade association;

(3) A majority of directors may not serve simultaneously as officers, directors, or employees of the same credit union trade association or its affiliates (not including chapters or other subunits of a state trade association);

(4) For purposes of meeting the requirements of paragraphs (a)(2) and (a)(3) of this section, an individual may not serve as a director or chair of the board if that individual holds a subordinate employment relationship to another employee who serves as an officer, director, or employee of a credit union trade association;

(5) In the case of a corporate credit union whose membership is composed of more than 25% non credit unions, the majority of directors serving as representatives of member credit unions, including the chair, must be elected only by member credit unions.

(b) *Representatives of organizational members.*—(1) An organizational member of a corporate credit union is a member that is not a natural person. An organizational member may appoint one of its members or officials as a representative to the corporate credit union. The representative shall be empowered to attend membership meetings, to vote, and to stand for election on behalf of the member. No individual may serve as the representative of more than one organizational member in the same corporate credit union.

(2) Any vacancy on the board of a corporate credit union caused by a representative being unable to complete his or her term shall be filled by the board of the corporate credit union according to its bylaws governing the filling of board vacancies.

(c) *Recusal provision.*—(1) No director, committee member, officer, or employee of a corporate credit union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his or her pecuniary interest or the pecuniary interest of any entity (other than the corporate credit union) in which he or she is interested, except if the matter involves general policy applicable to all members, such as setting dividend or loan rates or fees for services.

(2) An individual is "interested" in an entity if he or she:

(i) Serves as a director, officer, or employee of the entity;

(ii) Has a business, ownership, or deposit relationship with the entity; or

(iii) Has a business, financial, or familial relationship with an individual whom he or she knows has a pecuniary interest in the entity.

(3) In the event of the disqualification of any directors, by operation of paragraph (c)(1) of this section, the remaining qualified directors present at the meeting, if constituting a quorum with the disqualified directors, may exercise, by majority vote, all the powers of the board with respect to the matter under consideration. Where all of the directors are disqualified, the matter must be decided by the members of the corporate credit union.

(4) In the event of the disqualification of any committee member by operation of paragraph (c)(1) of this section, the remaining qualified committee members, if constituting a quorum with the disqualified committee members, may exercise, by majority vote, all the powers of the committee with respect to the matter under consideration. Where all of the committee members are disqualified, the matter shall be decided by the board of directors.

(d) *Administration.*—A corporate credit union shall be under the direction and control of its board of directors. While the board may delegate the performance of administrative duties, the board is not relieved of its responsibility for their performance. The board may employ a chief executive officer who shall have such authority and such powers as delegated by the board to conduct business from day to day. Such chief executive officer must answer solely to the board of the corporate credit union, and may not be an employee of a credit union trade association.

Note: The following appendix will not appear in the Code of Federal Regulations

Appendix to the Preamble of the Final Rule

The document entitled "Corporate Federal Credit Union Bylaws" is amended by revising Article IV, Section 2, and Article V, Sections 1 and 2, and adding Article V, Section 4, to read as follows:

Article IV. Meetings of Members

* * * * *

Section 2. At least 75 days before the date of any annual meeting or 10 days before the date of any special meeting of the members, the recording officer shall cause written notice to be mailed to each member at the address that appears on the records of this credit union. Such notice shall state the date, time, and location of the meeting and such other information as the board of directors shall determine consistent with these bylaws. The written notice for the annual meeting shall advise the members of the deadlines for elections. Any meeting of the members, whether annual or special, may be held without prior notice, at any time or place, if all members entitled to vote and who are not present at such meeting shall, in writing, waive notice thereof, before, during, or after such meeting.

* * * * *

Article V. Elections

Section 1. At least 120 days prior to each annual meeting the board of directors shall appoint a nominating committee of not fewer than three from among the members. It shall be the duty of the nominating committee to nominate at least one eligible candidate for each vacancy, including any unexpired-term vacancy, for which elections are being held, and to determine that the candidates nominated are agreeable to the placing of their names in nomination and will accept office if elected. The nominating committee shall file its nominations with the recording officer at least 90 days prior to the annual meeting, and the recording officer shall notify in writing all members eligible to vote at least 75 days prior to the annual meeting that nominations for vacancies may also be made by petition signed by 5 percent of the members with a minimum of 5 members and a maximum of 100 members.

The written notice shall indicate that the election will not be conducted by ballot and there will be no nominations from the floor when there is only one nominee for each position to be filled. A brief statement of qualifications and biographical data in such form as shall be approved by the board of directors will be included for each nominee submitted by the nominating committee with the written notice to all eligible members. Each nominee by petition shall submit a similar statement of qualifications and biographical data with the petition. The written notice shall state the closing date for receiving nominations by petition. The period for receiving nominations by petition shall, in all cases, extend at least 30 days from the date the petition requirement and the list of nominating committee nominees are mailed to all members. To be effective, such nominations shall be accompanied by a signed certificate from the nominee or nominees stating that they are agreeable to nomination and will serve if elected to office. Such nominations shall be filed with the recording officer at least 40 days prior to the annual meeting.

In carrying out their responsibilities, the nominating committee and board of directors must ensure that the requirements of 12 CFR § 704.12(a) are satisfied.

Section 2. All elections shall be determined by plurality vote and shall be by mail ballot except where there is only one nominee for each position to be filled. Nominations shall not be made from the floor unless sufficient nominations have not been made by the nominating committee or by petition to provide for one nominee for each position to be filled or circumstances prevent the candidacy of the one nominee for a position to be filled. Only those positions without a nominee shall be subject to nominations from the floor. In the event nominations from the floor, when permitted herein, result in more than one nominee for a position to be filled, and when nominations have been closed, tellers shall be appointed by the board of directors, ballots shall be distributed, the vote shall be taken and tallied by the tellers, and the results announced. When only one member is nominated for each position to be filled, the chair may take a voice vote or declare each nominee elected by general consent or acclamation at the annual meeting.

* * * * *

Section 4. Except as provided in Section 2 of this article, all elections shall be by mail ballot, subject to the following conditions.

(a) The tellers of election shall be appointed by the board of directors;

(b) Sufficient nominations having been made by the nominating committee or by petition to provide more than one nominee for any position to be filled, the recording officer shall, at least 30 days prior to the annual meeting, cause printed ballots to be mailed to all members eligible to vote;

(c) The recording officer shall cause the following materials to be mailed to each eligible voter:

(1) One ballot, clearly identified as such, on which the names of the candidates for the board of directors and the candidates for other separately identified offices or committees shall have been printed in order as determined by the draw of lots. The name of each candidate shall be followed by a brief statement of qualifications and biographical data in such form as shall be approved by the board of directors;

(2) One envelope clearly marked with instructions that the completed ballot shall be placed therein and the envelope sealed;

(3) One identification form to be completed so as to include the name, address, and account number of the voter;

(4) One mailing envelope in which the voter, pursuant to instructions provided, shall insert the sealed ballot envelope and the identification form, and which shall have

been postage prepaid and pre addressed for return to the tellers of election;

(5) When properly designed, one form can be printed that represents a combined ballot/identification form, and postage prepaid and pre addressed return envelope;

(d) It shall be the duty of the tellers of election to verify, or cause to be verified, the name and account number of the voter appearing on the identification form; to place the verified identification form and the sealed ballot envelope in separate places of safekeeping pending the count of the vote; and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved;

(e) Ballots mailed to the tellers of election must be received by the tellers no later than midnight 5 days prior to the date of the annual meeting;

(f) Voting shall be closed at the midnight deadline specified in subsection (e) hereof and the vote shall be tallied by the tellers of election. The result shall be verified at the annual meeting, and the board of directors shall make public the result of the vote at the annual meeting.

[FR Doc. 94–28367 Filed 11–16–94; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–ANE–49; Amendment 39–8861; AD 94–07–03]

Airworthiness Directives; AlliedSignal, Inc. TFE731–2A and –3 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 94–07–03 applicable to certain AlliedSignal, Inc. TFE731–2A and –3 series turbofan engines that was published in the **Federal Register** on April 20, 1994 (59 FR 18709). The AlliedSignal, Inc. TFE731–2A engine was omitted from the Title, Summary, and Supplementary Information sections. This document corrects that omission. In all other respects, the original document remains the same.

EFFECTIVE DATE: November 17, 1994.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to AlliedSignal, Inc. TFE731–2A and –3 series turbofan engines, was published in the **Federal Register** on April 20, 1994 (59 FR 18709). The following correction is needed:

On page 18709, in the right column, in the Title, "TFE731–3 Series" should read "TFE731–2A and –3 Series."

On page 18710, in the left column, in the **SUPPLEMENTARY INFORMATION,** "TFE731–3 series" should read "TFE731–2A and –3 series."

Issued in Burlington, MA, on November 3, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–28371 Filed 11–16–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960–AC86

Supplemental Security Income for the Aged, Blind, and Disabled; Treatment of Augmented Veterans Benefits, Anderson, et al. v. Sullivan

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final regulations set out our policy, under the supplemental security income (SSI) program, regarding the treatment of veterans benefits that are increased ("augmented") to provide for dependents. The effect of these regulations is to clarify our treatment of the "dependent's portion" of the veterans benefits.

DATES: *Effective Date:* November 17, 1994.

Applicability Dates: The application dates of these final regulations are discussed in the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Regarding this document—Duane Heaton, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8470; regarding eligibility or filing for benefits—our national toll-free number, 1–800–772–1213.

SUPPLEMENTARY INFORMATION: Section 1612 of the Social Security Act (the Act) specifies certain items that are included as earned and unearned income under the SSI program. Section 1612(a)(2)(B) provides that unearned income includes, among other things, payments received as an annuity, pension, retirement, or disability benefit, including veterans compensation and pensions.

With regard to veterans benefits, in certain situations the veteran or the veteran's surviving spouse's benefits are augmented on account of the dependents of the veteran. Prior to November 1981, the Social Security Administration (SSA) counted the entire benefit, including the augmented portion, as income to the veteran or veteran's surviving spouse for SSI purposes. In 1981, after the policy was successfully challenged in the courts, SSA changed its policy, effective November 1, 1981, and published a ruling (SSR 82–31) which explained that for SSI purposes the dependent's portion of an augmented veterans benefit would not be counted as unearned income to the veteran or the veteran's surviving spouse but as unearned income to the dependent.

The Anderson Case

SSA was challenged in *Anderson, et al.* v. *Sullivan,* No. CV–88–036–GF (D. Mont., Nov. 21, 1989), for not applying the policy published in SSR 82–31 to a nationwide class of recipients of veterans pensions known as "protected pensions." The protected pensions under Pub. L. 95–588 include pensions which are means-tested and paid under provisions that predate the current "improved pension" program. In *Anderson,* the plaintiff was a veteran's widow who received a veterans protected pension and SSI disability benefits. Her pension was augmented due to the presence of a dependent in her household. SSA considered the full amount of the veterans pension, including the dependent's portion, as income to Mrs. Anderson in determining the amount of her SSI benefits. She filed suit against the Secretary of Health and Human Services (the Secretary) seeking relief from our practice of counting the dependent's portion of her veterans protected pension as income to her. SSA had counted this as income to her because of incomplete information received from the computer match between the Department of Veterans Affairs (VA) and SSA with regard to veterans protected pensions. On November 21, 1989, the court in *Anderson* ordered the Secretary to promulgate, within 6 months, interim final regulations that provide that the augmented portion of a veterans pension is not to be counted as unearned income to the veteran or the veteran's surviving spouse.

Provisions of the Regulations Under Anderson

Interim final regulations implementing the *Anderson* order were published on May 18, 1990 (55 FR