Harvest limits	Open season
Unit 26(C)—3 sheep per regulatory year; the Aug. 10–Sept. 20. season is restricted to 1 ram with ⅞ curl horn or larger. A Federal registration permit is required for the Oct. 1–Apr. 30 season. Kaktovik residents may harvest sheep in accordance with a Federal community harvest strategy for Unit 26(C) which provides for take of up to two harvest limits of 3 sheep by designated hunter.	Aug. 10–Sept. 20. Oct. 1–Apr. 30.
Moose:	
Unit 26(A)—that portion of the Colville River drainage upstream from and including the Chandalar River drainage—1 moose; however, no person may take a cow accompanied by a calf.	Aug. 1–Mar. 31.
Remainder of Unit 26(A)—1 moose; however, no person may take a cow accompanied by a calf	Aug. 1–Dec. 31.
Unit 26(B)—that portion within two miles of the Dalton Highway.	No open season.
Unit 26((B) Remainder and (C)—1 moose.	Aug. 1–Dec. 31.
Musk Oxen:	
Unit 26(C)—1 bull by Federal registration permit only; up to 10 permits may be issued to rural Alaska residents of the village of Kaktovik only. Public lands are closed to the taking of musk oxen, except by rural Alaska residents of the village of Kaktovik during seasons identified above.	Oct. 1–Nov. 15. Mar. 1–Mar. 31.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase):	
2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 26(A) and (B)—10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Unit 26(C)—10 foxes	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 1–Apr. 15.
Wolf:	
10 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharptailed):	
15 per day, 30 in possession.	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 10–Apr. 30.
Trapping:	
Coyote:	
No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Apr. 15.
Lynx:	
No limit	Nov. 1–Apr. 15.
Marten:	
No limit	Nov. 1–Apr. 15.
Mink and Weasel:	
No limit	Nov. 1–Jan. 31.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Apr. 30.
Wolverine:	
No limit	Nov. 1–Apr. 15.

Dated: May 12, 1994.

Ronald B. McCoy,

Interim Chair, Federal Subsistence Board.

Robert W. Williams,

Acting Regional Forester, USDA-Forest Service.

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June 3, 1994

Part IV

National Credit Union Administration

12 CFR Part 701

Organization and Operation of Federal Credit Unions; Rule

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operation of Federal Credit Unions

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Final Interpretive Ruling and Policy Statement 94–1—Chartering and Field of Membership Policy (IRPS 94–1).

SUMMARY: This final interpretive ruling and policy statement ("IRPS") is the result of NCUA's policy of reevaluating all its regulations periodically to determine whether change is warranted. The NCUA Board approved publication of a proposed IRPS on chartering and field of membership after its July 15, 1993 open meeting; the public ultimately was given 180 days to submit comments. This final IRPS 94–1 reflects a full evaluation of those comments; substantial changes as outlined below were made to the proposal. This IRPS 94–1 replaces IRPS 89–1.

The NCUA is also issuing a final amendment to update Part 701.1 of its Rules and Regulations entitled "Organization and Operations of Federal Credit Unions".

EFFECTIVE DATE: July 5, 1994.

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

FOR FURTHER INFORMATION CONTACT: H. Allen Carver, Regional Director, National Credit Union Administration, (404) 396–4042, 7000 Central Parkway, Suite 1600, Atlanta, Georgia 30328.

SUPPLEMENTARY INFORMATION:

Background

I. The Proposed IRPS

On July 28, 1993, the NCUA Board published a proposed interpretive rule and policy statement (IRPS) updating chartering and field of membership policies, and also published a proposed amendment to Section 701.1 of the NCUA Rules and Regulations (12 CFR 701.1), to reference the updated IRPS. The proposal was issued with a 90 day comment period that was extended by the NCUA Board for an additional 90 days due to a public request. The proposed IRPS was designed: (1) To update policies on low-income credit unions; (2) to streamline the charter application process; (3) to address credit unions undergoing corporate and military unit restructuring; (4) to clarify NCUA policy on the "operational area" requirement for select group expansions; and (5) to make certain other minor or technical changes to modify or clarify NCUA policy.

The Board also requested specific comment on the following issues: (1) Whether NCUA should permit credit union chartering and field of membership expansions based on associational groups formed for the sole purpose of making credit union service available to low-income persons, such as is now permitted for existing credit unions seeking to extend service to senior citizens; (2) Whether NCUA should permit occupational, associational, and multiple group federal credit unions to add to their fields of membership communities satisfying the "low-income credit union" definition found in Part 701.32 of NCUA's Rules and Regulations; (3) Whether there should be special procedures for permitting select group expansions "in the public interest;" and (4) Whether NCUA should establish a streamlining "file and serve" procedure for select group expansions of fewer than 50 potential members.

II. Summary of Comments Received

One hundred and thirty-nine public comment letters were received. Comments were received from seventy-eight federal credit unions, six state chartered credit unions, one state regulator, thirteen state credit union leagues, seven national credit union trade organizations, and two individuals.

The Board also received comments from thirty-two banks and banking associations. Briefly summarized, the bank commenters argued that federal credit unions are permitted to expand only within a single common bond, and that federal credit unions should be subject to tax like banks. The NCUA Board, in currently ongoing litigation, has repeatedly stated its disagreement with banking organizations' position on various matters regarding field of membership issues. The question of taxation has been decided by Congress and the President.

In general, the credit union commenters partially supporting or opposed to the proposal argued that NCUA should go even further in liberalizing chartering and field of membership policy. For example, the vast majority of commenters favored deleting operational area requirements altogether for select group amendments. Though the credit union community's desire for more flexibility in accepting new members is understandable, the NCUA Board is unwilling to make the significant changes suggested in operating rules that have served the community well for so long. The Board, in the final IRPS, has adopted a more conservative approach to change.

At the same time, the Board has noted the continuing decline in the number of credit unions and the lack of new chartering activity in recent years. The final IRPS makes significant changes to existing policy to encourage new chartering activity, particularly in low-income areas.

THE ISSUES AND NCUA BOARD DECISIONS

I. Field of Membership Changes To Promote Service to Low-Income Persons

A. Comments in General

The Board's suggestions for significantly liberalizing field of membership policy to encourage service to low-income persons by any sector of the credit union movement generated a great deal of interest.

The first suggestion was to permit credit union chartering and field of membership expansion based on associational groups formed for the sole purpose of making credit union service available to low-income persons, much as is now permitted for existing credit unions seeking to extend service to senior citizens. Nineteen commenters approved of this proposal as a proper method to increase financial services to low-income individuals. However, one association commenter stated that in the case of a low-income credit union, it would oppose a low-income "association" seeking to align with such a non low-income credit union if the association's constituents were already eligible for membership in an existing low-income credit union, unless the latter did not object. This commenter asked whether it was NCUA's intent that the individuals of this associational group themselves be low-income or simply have a stated interest in making services available to low-income persons. This commenter also asked what method of income documentation NCUA would require for the association and whether all of the proposed members would have to qualify as low-income or simply a majority. Four commenters opposed this proposal as unnecessary.

The Board also requested comment on a proposal to permit occupational, associational, and multiple group federal credit unions to add to their fields of membership communities satisfying the "low-income credit union" definition of Part 701.32 of NCUA's Regulations. Thirty commenters approved of this proposal. Most of these commenters believed that

it would allow healthy credit unions to help low-income individuals. Two commenters stated that in many cases credit unions are the only financial institutions that are willing to work with low-income individuals in an effort to promote fiscal responsibility. Two commenters believed there was reason to limit this proposal to non-community credit unions. These commenters believed there may be instances when it would be appropriate for a community credit union to serve a non-contiguous low-income community. Furthermore, these commenters suggested that any credit union wishing to serve a low-income group or community should include in its business plan details on how it will serve the group and periodically review how successful its efforts have been.

Eight commenters opposed the proposal. Three commenters believed there would be a potential for the credit union to "cherry pick" low-income neighborhoods without truly being dedicated to its development.

Two commenters suggested that the credit union maintain separate accounting records for the low-income addition, and at a later date, if the low-income addition was successful, it could be spun off and stand on its own. One commenter suggested that "persons participating in programs to alleviate poverty or distress" in a designated community also be considered an acceptable group for additions. Five commenters suggested it might be possible to charter new community development credit unions that would immediately operate under the agency's conservatorship policies—perhaps for a minimum period of three years. The commenters also suggested that under NCUA's broad conservatorship powers, NCUA could hire the services of a nearby existing credit union under a management contract to operate the new credit union.

One commenter stated that minimum requirements should be instituted for any non-low-income credit unions seeking permission to enter a low-income area to ensure that the community will be adequately served. One commenter suggested that a non low-income credit union be required to provide status reports on its service to such a low-income group. One commenter recommended that no expansion should be granted unless it could be demonstrated that there would be no adverse material impact on existing low-income credit unions in the area, or groups in the process of chartering a low-income credit union. One commenter stated that before an expansion was granted, the federal credit union should be required to perform a study of the credit and depository needs of the low-income group.

One commenter supported using the existing limited income designation criteria as defined by NCUA to allow existing religious-based credit unions to grant access to credit union service in their immediate financially underserved communities. One commenter recommended allowing minority chambers of commerce or other associations of minority and economically disadvantaged business people, along with their respective employees, to qualify for charters.

B. NCUA Board Decision

The Board agrees that low-income persons need expanded credit union service. To ensure that all possible means of accomplishing this end can be used, the final IRPS:

- Permits chartering associational low-income federal credit unions, where the association is organized solely for the purpose of providing credit union service to low-income persons.
- Permits a low-income federal credit union, whether associational or community based, to include in its charter, occupational, associational, and community common bond groups without regard to location. The credit union will have to monitor such additions to its base common bond, however, to ensure that the credit union remains qualified for a low-income credit union designation.
- Permits a federal credit union of any type—occupational, associational, community, or multiple group—to include low-income groups in its field of membership, without regard to the groups' location, either by forming an association which is organized solely for the purpose of providing such service or by including a community group which could be the basis for chartering a low-income credit union.

The Board shares some commenters' concerns that this policy change may be used to "cherry pick" by meeting the credit needs of a relatively well-off portion of a low-income community while leaving those most in need of service with nothing. The Board will institute special reporting requirements and special examination procedures for any credit union including a low-income group in its field of membership to ensure that adequate credit union services are provided to *all* persons in the community.

The Board sees no limitation in the Federal Credit Union Act preventing this policy change. While true that NCUA has generally refrained from combining community-based common bonds with occupational and associational common bonds, the reason for that limitation has been a concern for the safe and sound development of credit unions. The language of Section 109 of the Federal Credit Union Act, 12 U.S.C. 1759, which states "Federal credit union membership shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district," does not require segregation of community groups from other kinds of common bonds. The difference in wording for community based common bond seems to have arisen from the fact that the bond was more difficult to describe adequately. The "or" between the "common bond" provisions and the community description is no different from the "or" between "occupation" and "association", which the Board has long concluded permits combining occupational and associational common bonds in a single federal credit union, and which is consistent with the word's common usage.

Moreover, in IRPS 89–1, the Board described all three groupings—occupational, associational, and community—as "common bonds" without distinction, and in the case of distress mergers permitted intermingling of all three common bond types.

Finally, there is nothing in the evident purposes of the Act which suggests that community groups are necessarily to be treated differently from other common bonds. Functionally, all three common bonds perform an identical role—to help maintain in credit union members the sense of belonging and ownership that is so crucial to credit union success.

Other commenter suggestions—such as providing assurances that existing low-income credit unions are not overlapped and extending the agency's conservatorship power to help start low-income credit unions—can be implemented under existing policy where appropriate.

II. Other Issues Relating to Low-Income Federal Credit Unions

A. Comments

Four commenters approved of updating low-income credit union polices based on the revised regulatory definition. Two commenters believed that low-income credit unions should have access to the CDCU Revolving Loan Program immediately upon beginning operation. One commenter suggested that community groups be

able to seek a preliminary determination of a low-income designation before final submission of a charter package.

One commenter urged that associational groups proposing to start low-income credit unions not be required to demonstrate voting, dues-paying membership structures because, among other things, it would hurt church based associational groups.

B. NCUA Board Decision

The Board agrees with these suggestions. The final IRPS:

- Updates the provisions on low-income credit unions to reflect recent changes in the Rules and Regulations
- Eliminates the voting and dues-paying requirements for recognition of an associational common bond
- Provides for preliminary review of the low-income designation.

Part 705 of the NCUA Rules and Regulations (12 CFR 705.0 *et seq.*) currently provides qualifying newly chartered credit unions with immediate access to the CDCU Revolving Loan Fund.

III. Streamlining the Process for New Charter Applications

A. Comments

Six commenters approved the streamlining process for new charter applications. Four commenters believed that the amount of time that passes between the day a potential credit union submits a charter application to NCUA for approval and the day the application is actually approved or denied was acceptable. Two commenters believed the time frame for chartering was unacceptably lengthly. One commenter suggested that an acknowledgment of receipt of the chartering application "be sent to the organizers in a timely fashion" preferably within 10 days.

One commenter stated that it would facilitate chartering if groups were able to obtain tentative approval of their fields of membership early in the process. This commenter also believed that early submission of NCUA 4012 may also speed the process.

The proposal stated that the subscribers should be responsible for paying the cost of credit reports and background checks when applying for a credit union charter. Seven commenters agreed with this provision. Nine commenters believed that the subscribers should not be responsible for paying the cost of credit reports and background checks when applying for a new charter. Two commenters recommended that NCUA articulate the standards relied upon in disqualifying credit union organizers.

B. NCUA Board Decision

The NCUA Board agrees with these suggestions and is hopeful that the result of all the changes made will be a significant increase in new federal chartering activity. Small, vibrant credit unions, serving their members on a first-name basis and willing to take reasonable credit risks based on personal knowledge of their members' character, are a vital part of the credit union movement. Many credit unions which used to fill this niche have through their success grown to the point where credit union management can no longer make these personal judgments on each individual member. A new generation of small credit unions is needed to fill that void, particularly in the many poor inner-city and rural areas where credit needs are now largely unmet.

The final IRPS provides:

- That charter applicants will receive acknowledgment of the application's receipt in 10 business days
- That tentative field of membership approval will be given early in the process
- That early submission of NCUA 4012 will be encouraged
- That the cost of credit reports and background checks will be borne by NCUA

The NCUA Board does not believe, however, that it would be productive to establish many other absolute standards and guidelines. Each application is to some extent unique and may require somewhat different procedures and time frames. The Board believes these are best left to be worked out between the prospective credit union officials and NCUA staff.

IV. Distress Situations Caused by Dramatic Changes in Economic Conditions Within a Federal Credit Union's Field of Membership

A. Comments

The proposal would have permitted an associational, occupational, or multiple group credit union converting to a community charter as a result of significant corporate or military restructurings to maintain service to groups in its field of membership prior to conversion and to add other groups within the credit union's operational area after the conversion, but for only so long as needed to ensure the credit union's continued viability. A group consisting of all NCUA Regional Directors and the Director of Examination and Insurance would vote to determine the necessity of allowing the converting credit union to maintain the select employee groups. Eighteen commenters favored the proposal.

Four commenters believed this authority should be expanded to all community charters where continued viability is threatened by a major employer's restructuring. These commenters believed there was no reason to treat a "converting to" community charter any different from existing community charters when in both cases the threat is viability caused by similar events.

Though many commenters suggested abandoning the operational area requirement altogether (see " 'Public Interest' Addition Comments" below), one in particular urged that it at least be abandoned in distress situations. Eight commenters opposed the proposal. Two commenters stated that military credit unions should not be granted community charters except in rare cases where an isolated base is the community. These commenters believed that in a heavily populated area where there are many other credit unions already serving select groups, this proposal would grant an unfair advantage to military credit unions. Six commenters approved the special administrative approval procedure but nine objected to it.

B. NCUA Board Decision

The Board is persuaded that federal credit unions of all types need additional flexibility when faced with distress situations such as significant corporate or military restructuring. The final IRPS:

- Permits federal credit unions of all types—occupational, associational, multiple group, and community—to apply for designation as a "distressed federal credit union" and to do so regardless of whether they are converting to community charter
- Permits federal credit unions with such designations to add occupational and associational groups to their fields of membership regardless of location.

As an added assurance that the process is administered consistently and proper guidance is given, the NCUA Board will reserve to itself, at least initially, the authority to grant "distressed credit union" designations. The Board believes that, with this added requirement, there will be adequate controls in place to prevent abuse: There will be a comprehensive review by the NCUA Board prior to initial designation; groups must request service in order to be added to a distressed credit union's field of membership; the regional director must approve all expansion requests; and normal overlap procedures will apply.

V. Common Bond Issues

A. Occupational Common Bonds

1. Comments

The proposal suggested only slight modifications of current policy. It stated that a proposed federal credit union whose primary sponsor is a particular corporation may include the employees of that corporation who work at another location, employees of the corporation who are paid from or are supervised from the headquarters location, such as sales persons or sales agents who work at a number of locations, employees of a division or majority-owned subsidiary of the parent company regardless of location, and employees of a related company (such as a person working regularly for an enterprise under contract and possessing a strong dependency relationship with the sponsoring enterprise). Each group to be served (e.g., majority-owned subsidiaries, contractors) was to be separately listed.

One commenter objected to the proposal that each group to be served must be separately listed. This commenter suggested that NCUA be more lenient. Another commenter requested that if an occupational credit union furnished evidence of its parent company's preference for one credit union, that credit union should be allowed to describe its field of membership to include the parent and all other companies under common control. One commenter stated that the components of a field of membership definition should be limited to legal entities.

One commenter stated that the Chartering Manual does not state procedures necessary for a credit union to keep its existing membership, if a company or a division has been sold. This commenter believes that if a company or division is sold to a company which has a credit union, then the original credit union loses the field of membership after the sale; otherwise, service should be allowed to continue.

2. NCUA Board Decision

The NCUA Board agrees that the wording of this portion of IRPS 89–1 pertaining to business relationships is in need of some revision. The final IRPS has been rewritten to provide more clarity. However, the Board does not see a need to broaden the occupational common bond definition in general at this time.

The Board does believe, however, that it is a disservice to cut off service to groups which are divested from a sponsoring firm. The final IRPS permitted continued service if the group desires it.

Finally, it is clear that some in the credit union community have misunderstood why the NCUA Board proposed requiring listing of subsidiary entities included in a common bond. The agency is in the process of establishing a field of membership database for internal monitoring of overlaps. Federal credit union listing of all subgroups would greatly enhance the reliability and overall usefulness of the database. But the NCUA Board sees no need to impose this requirement on a federal credit union which finds that process overly burdensome, and the final IRPS has deleted this portion of the proposal. Such a credit union should understand, however, that if a specific group is not mentioned in its charter, and the group in good faith states in a request for service from another credit union that it does not have credit union service available (as often happens with new subsidiaries of sponsoring groups), an overlap may inadvertently be permitted without full consideration for the overlapped credit union's interests. If the overlap is discovered after the other credit union has begun service, it is likely that, in the interests of the group and the other credit union, NCUA will permit the overlap to continue.

B. Associational Common Bonds

1. Comments

The proposal clarified that a federal credit union seeking to include an association in its field of membership may only include natural persons who pay dues and have voting rights or hold office in the association. Eight commenters supported this change. Twenty-one commenters opposed the proposal. In general, these commenters believed that not all natural person associations require a member to pay dues. A few commenters stated that the proposal would harm church associations that have members that do not pay dues. Four commenters stated the proposal would harm low-income cooperatives. One commenter stated that the collection of dues for an associational group may be entirely irrelevant to the group's purpose or mission. One commenter stated that this requirement can not be reasonably monitored by a federal credit union.

The proposal also clarified that a federal credit union's field of membership has to be updated and approved by NCUA when an association changed its bylaws to modify the scope of those eligible for membership. Six commenters approved of this clarification. One commenter stated that without this limitation an associational credit union would be allowed to change to an open field of membership. Thirteen commenters disapproved of the clarification. Six of these commenters believed that if an association changed its bylaws frequently it could cause an administrative nightmare for the credit union and NCUA if the charter had to be amended every time the bylaws changed. One commenter believed the main concern should be whether the association in question was a viable functioning organization. This commenter believed that an association with membership qualification requirements, bylaws and meetings should be defined as a functioning organization.

The proposal removed the requirement that students must join the credit union prior to family members becoming eligible. Five commenters agreed with this change.

One commenter stated that the final IRPS should be modified to allow for inclusion of an entire association in a federal credit union at a higher level if that level provided broad based services which were not available at a lower level.

2. NCUA Board Decision

The NCUA Board agrees that the dues-paying and voting rights requirements of the proposal could be unfair to some bona fide associations. The final IRPS lists these elements as factors to be considered, not as requirements.

The Board has also attempted to clarify in the final IRPS the ambiguities noted by some of the commenters.

The Board does not agree, however, that it should alter its present policy in favor of service to associations at the lowest possible level, or that it is appropriate to allow associations to modify portions of their bylaws which dramatically change the make-up of membership without agency review. The final IRPS maintains these provisions as in the proposal.

VI. Select Group Addition Issues

A. Comments

A number of comments were received on the various proposed changes to NCUA's select group addition policy. They are best discussed as a group.

1. "Public Interest" Addition Comments

The Board requested comment on a limited "public interest" procedure by which NCUA might approve a federal credit union expansion to include a group outside the operational area of a

home or branch office, if such action was in the interest of making quality credit union service available to all eligible groups who wish to have it, and if doing so would not have a significant adverse effect on the safe and sound operations of credit unions. Any federal credit union seeking such an expansion would need to provide certain documentation, including a summary of the views of each credit union with a home or branch office within a 25 mile radius as to whether each has agreed to inclusion of the group in the applying credit union's field of membership, and if the credit union refused, the reasons for the refusal.

Thirty commenters supported the concept of the "public interest" proposal. These commenters generally believed that the proposal would provide more people with credit union service. However, most of these commenters believed the proposal's operational area requirement was unnecessary. Furthermore, sixteen commenters stated that the proposal's documentation requirements were so onerous that it would discourage most credit unions from trying to use the procedure. Six commenters opposed this proposal.

One commenter believed that the only use for the "public interest" procedure should be to provide an exception to the rules for credit unions experiencing a loss of members due to some extraordinary circumstances, such as a base closing or a corporate restructuring. This commenter believed the test for a "public interest" procedure should be based on: (1) The demand for credit union service; (2) the capability of the credit union to provide services; and (3) the level of membership necessary to sustain the affected credit union.

2. "Operational Area" Comments

NCUA has traditionally focused multiple group field of membership additions around the "operational area" of a home or branch office. This policy was designed to ensure a satisfactory level of commitment and service to the groups included in the field of membership, while also minimizing instances of overlap and deterring territorial stakeouts by overly aggressive credit unions. However, in response to new technologies and innovations, the proposal clarified operational area requirements. The first clarification was that for purposes of a field of membership expansion the "standard" operational area will be considered an area within a 25 mile radius of a home or branch office, but that this standard may be extended for rural areas. Six commenters believed the proposed operational area was reasonable and approve of it. Four other commenters agreed in general with the definition but believed that there should be more leeway for rural areas.

Forty-one commenters objected to the 25 mile operational area as outdated in light of current technology. Thirty-seven commenters stated there should not be any operational area. They believed that direct deposit, automated teller service, and service-by-phone, in many cases, has eliminated the need for physical access to a branch. Five commenters believed operational area should just be one of many factors to be considered in a field of membership expansion.

A few of the commenters stated that a progressive approach to the expansion of services is one based on functionality, not geography. They believed a functional approach should be based on the capacity and willingness to serve matched with a demand for those services. One commenter suggested that the determination of the operational area of a credit union should be based on whether the credit union can reasonably be expected to deliver adequate credit union service to the area. This commenter suggested that NCUA approve a field of membership expansion request if: (1) There is a clear demand for the credit union's services; (2) the credit union is capable of providing the services; and (3) other credit unions in the area are not already providing the service. Twelve commenters stated that any credit union should have the option to add select employee groups to its field of membership (without regard to operational area) if it has the financial resources to do so and there is no overlap.

3. "Shared Facilities" Comments

The proposal stated that "shared facilities" and "shared service centers" were specifically to be excluded from consideration as either a "home" or "branch" office for purposes of meeting NCUA's operational area requirement, except in unusual circumstances—e.g., where a credit union is converting an existing home or branch office to a "shared facility." Nine commenters believed this to be a reasonable position and agreed with the clarification. One commenter stated that this position would ultimately help service centers prosper and control predatory concerns from credit unions not participating in shared service center programs.

Seven commenters opposed the clarification. Several commenters believed the proposal would force some credit unions into unnecessary expenditures for "brick and mortar" facilities. Some commenters suggested that field of membership expansions be allowed around a shared branch if the credit union has a material (20%) stake in the facility. They believed shared branches were tantamount to a credit union's own property.

4. "Branch" Comments

The proposal stated that a facility which was directly and solely owned by, leased by or donated by a credit union and had credit union employees regularly on site who accept payment on shares and disburse loans was clearly a home or branch office. One commenter objected to the requirement that a branch office have a paid employee working in it. This commenter believed this section needed to be modified to include credit union volunteers.

One commenter believed that in order to facilitate growth among credit unions, NCUA should reconsider its position that "the addition of a new select group alone is not enough to justify a proposed home or branch office."

One commenter believed the definition of branches should be expanded to more closely identify and define the difference between an "open branch" and a "closed branch." This commenter stated that an open branch should be identified as one where members from any company or group could have free access and that a closed branch should be identified as one that is located within a sponsor's facility that is accessible only to employees of that group. This commenter believed that taking on additional small employee groups using a close branch as the base in determining the 25 mile radius should not be permitted.

B. NCUA Board Decision

The NCUA Board is not prepared to jettison the "operational area" limitation or to make substantial changes in how that limitation is defined. The requirement has served credit unions well and remains vital. Some of the wording in the final IRPS has been changed to make the concept more adaptable to the variety of credit union service outlets, however. "Home or branch office" has been changed to "service facility," for example, and the requirement to have an "employee" on site has been changed to "representative" to accommodate the possibility of volunteers.

However, the final IRPS does not include provisions for a "public interest" field of membership expansion. Moreover, the Board does not believe that technology has reached the point where access to a facility where business can be transacted by

interaction with another person is unimportant. Therefore, the operational area requirement will continue to be linked to the credit union's ability to provide service by such means. Finally, the Board cannot, without substantially more experience, allow "shared service centers" and other similar kinds of group service arrangements to be considered "service facilities" for select group expansion purposes; the effects of such a change are too unclear at this point. The final IRPS therefore excludes from the definition of a "shared facility" locations at which service is provided to a significant number of different credit unions' members.

VII. Community Charters

A. Comments

Two commenters believed the proposal did not address the concerns of community credit unions. The proposal clarified that a community credit union's operational (service) area was to be defined by its boundaries. Four commenters agreed with this clarification. Four commenters believed that the authority to add new groups outside community boundaries should be extended to all community charters where continued viability is threatened by a major corporate or military restructuring. These commenters believed there was no reason to treat a "converting to" community charter any differently from existing community charters when in both cases the threat is viability caused by similar events. Eight commenters believed any community credit union should have the option to add select employee groups to its field of membership if it has the financial ability to do so and NCUA determines that no other credit union in the area could serve the group. Four commenters suggested allowing community credit unions to merge with multiple group or associational credit unions while still continuing to serve the former fields of membership of both credit unions.

Four commenters believed NCUA should provide for the chartering of community credit unions in two non-adjacent communities. These commenters believed the granting of community charter status in one area should not prevent the credit union from continuing to serve and admit new members from existing select employee groups in a second area, or obtaining a dual community charter.

One commenter believed NCUA should make it easier to expand geographic boundaries of community credit unions by eliminating the requirement of showing a "commingling of the two communities." This commenter believed this requirement was no longer realistic because electronic transactions have taken over in the marketplace.

B. NCUA Board Decision

The Board believes the final policy statement addresses the needs of community charters. In response to the advent of new technologies in communication and the evolving character of communities, the Board has slightly revised the definition of a community common bond. A community charter must continue to be limited to "a well-defined neighborhood, community, or rural district." However, a community will be defined as a single, well-defined area where residents interact. To meet this definition, the Board has established the following common bond requirements for a community charter: the geographic area's boundaries must be clearly defined; and the applicant for a new charter or an expansion must establish that the area is recognized as a "distinct neighborhood, community or rural district." This new policy eliminates the commingling requirement while still requiring the members to interact. The final policy also clarifies that the community credit union's operational (service) area is defined by its boundaries.

As stated earlier, community credit unions may also apply for a designation as a "distressed federal credit union" and to do so regardless of whether they are converting to a community charter. These credit unions, as well as low-income community credit unions, may add select employee groups outside their operational area to their fields of membership as long as they have the financial ability to serve the group. After the credit union community has some experience with this policy, the Board will assess the wisdom of extending this option to all community credit unions.

VIII. Overlap Issues

A. Comments

The proposal clarified that NCUA may exclude from overlap protection state chartered credit unions with a field of membership so broadly defined as to include virtually everyone in a wide area. Four commenters agreed with this clarification. However, many commenters addressed other overlap issues. Two commenters supported the requirement that credit unions involved in overlap situations first attempt to resolve related issues among themselves before turning to NCUA. Three commenters stated that field of membership policy was overly liberal and permits numerous overlaps which hurt small credit unions. Eight commenters stated that overlaps between credit unions should be liberally permitted.

Four commenters believed NCUA should include a definition of the term "incidental overlap" as a further aid to the credit union community. One commenter believed the term should be defined as 3% of the potential membership of the credit union being overlapped. One commenter stated that overlaps are incidental if they do not create questions of viability for the credit union affected by the overlap.

The proposal stated that an overlap may be justified if the original credit union failed to provide quality service to the group. One commenter suggested that the Board define "quality service" and reexamine its position regarding the absence of "specialized service as not being a justification for an overlap." Seven other commenters also believed that the term "quality service" needed to be defined. They believed the term was very subjective: Did it mean the number of services, hours open, or the attitude of workers? A few of these commenters believed the lack of a definition has hurt small credit unions.

One commenter supported NCUA's intent to provide overlap protection for any type of charter if there are significant safety and soundness concerns. This commenter would expand this to include a low-income service impact test: A credit union should be protected from overlaps which would impair its ability to effectively serve low-income members of the community.

The proposal also stated that in special cases exclusionary language should be used to limit the membership eligibility of widely dispersed employees or associations. One commenter disagreed with this limitation. This commenter believed that if there was a legitimate common bond, such as a single employer or association, and no credit union was serving the group, then exclusionary language was not necessary.

B. NCUA Board Decision

The final IRPS contains the provision in the proposal removing from overlap consideration broadly based state chartered credit unions, which parallels how the agency approaches broadly based federal charters. As to most of the remaining comments, the Board disagrees with many of the suggestions. The Agency's long-standing policy is working well. The vast majority of all overlaps are consented to by the

overlapped credit union. The remainder are resolved in a way which makes the interests of the group paramount. The Board continues to believe it needs flexibility in this area. Therefore, the final IRPS does not define "incidental overlap" or "quality service."

However, the Board agrees that experience with exclusionary clauses has not been entirely satisfactory. This entire section has been rewritten in the final IRPS in the hope of limiting their use to the few situations where they are truly warranted and effective.

IX. Documentation Issues

A. Comments

The proposal attempted to streamline documentation requirements. Five commenters stated that the documentation requirements in the proposal were not burdensome. Ten commenters disagreed. Many of these commenters also believed that financial statements were unnecessary in light of periodic call reports and examinations. Four commenters believed that financial statements should not be necessary for field of membership expansions.

Two commenters noted that, for a field of membership expansion, the proposal required documentation from groups "on the group's letterhead stationery and signed by an official representative to the group." The commenters believed this has generally been interpreted to mean an officer of the employer. These commenters believed that NCUA should be flexible and recognize that not all groups are represented by the employer or have an "official" representative. They suggested that the IRPS allow the regions to accept other documentation or certification.

B. NCUA Board Decision

The NCUA Board agrees that in the vast majority of cases regional staff have sufficient financial information available to make a determination as to the economic advisability of the proposed charter change. Therefore, the requirement to submit financial statements with a charter change request has been deleted. If a regional office needs additional information, it may ask for it. The NCUA Board also agrees that the requirement for letterhead stationery can be relaxed. With regard to the requirement that an "official representative" of the group sign the letter requesting service, the Board does not believe a change in the wording is needed, but will ensure that the regional offices are instructed to be more flexible in applying the term to specific situations.

X. The Proposed "File and Serve" Procedure

A. Comments

The proposal requested comment on a "File and Serve" select group expansion procedure. It was envisioned that the procedure would permit CAMEL code 1 and 2 credit unions to begin providing service to small groups—50 persons or fewer was suggested—prior to formal NCUA approval of the expansion. Thirty-six commenters favored the procedure. These commenters believed it would allow credit unions to timely serve new groups. However, some commenters suggested an increase in the number of potential members that could be added using the procedure. One commenter inquired whether the number included family members. Four commenters recommended NCUA issue guidelines on what to do if the expansion is subsequently denied by the Region.

Eighteen commenters objected to the "File and Serve" proposal. The reasons were varied. Nine commenters stated there were no procedures for what would happen if the expansion was denied by the Region and that it would be an administrative nightmare if a denial occurred. Eight commenters believed this proposal was not justified since regulatory delay in approving expansion requests was not a problem. Six commenters believed that there would be more conflicts arising from both intentional and unintentional overlaps. Five commenters stated that regulatory approval distinguishes credit unions from banks.

Three commenters suggested any CAMEL code 1, 2 and 3 credit unions be permitted to use the file and serve procedure. One commenter suggested that NCUA implement an alternative procedure by which CAMEL code 1 and 2 credit unions should be given preference by NCUA in reviewing field of membership expansions. Two commenters specifically objected to the procedure's being tied to a CAMEL rating. Four commenters recommended that all credit unions should be able to use the file and serve procedure. One of these commenters suggested NCUA could then restrict the file and serve authority on a case-by-case basis for any credit union it had concerns about. One commenter recommended adding a requirement that the filing credit union have to state that there was no overlap or existing eligibility for membership in another credit union for the group to be served.

B. NCUA Board Decision

Many of the commenters' suggestions have been incorporated into the final IRPS. The new policy will permit well operated federal credit unions in good standing with NCUA to apply for charter amendments which authorize the credit unions to make use of a streamlined process for adding small occupational groups currently without credit union service. The initial maximum number of persons in a group to be added under this procedure has been set initially by the NCUA Board at 100. The Board may be resolution adjust that number from time to time as appropriate.

XI. Other Procedures for Reviewing Field of Membership Addition Requests

A. Comments

The proposal sought to clarify the mechanics of requesting additions to a federal credit union's field of membership. Four commenters believed that the approval time on select employee group additions was excessive. Another commenter stated that the field of membership expansion procedure was burdensome and should be streamlined. Two commenters supported NCUA's goal of approving or denying field of membership expansion requests within the "10 business day or less" time frame.

One commenter stated that, in regard to charter amendments, once NCUA approves one, the board of directors of the credit union should not subsequently have to adopt it to make it effective.

Two commenters stated that pre-notification of a proposed field of membership expansion in another credit union's operating area should be a common courtesy. Three commenters believed the final IRPS should provide at a minimum for some form of publication and hearings or period of comment relative to an expansion of any credit union's field of membership.

B. NCUA Board Decision

The NCUA Board believes that a ten-business-day turnaround for field of membership amendment requests is reasonable. All regions have automated the review process so that this time frame should be exceeded only in extraordinary cases. The Board strongly believes, however, that a federal credit union's board needs to be involved in the process—after all, the board is responsible for the institution's overall direction and control. There are adequate procedures a federal credit union can put in place to ensure that needed board oversight can be

maintained without delaying initiation of service to a group.

The Board also disagrees that a public notice procedure should be implemented. The overlap procedures now in place provide adequate safeguards.

XII. Federalism Concerns

A. Comments

The proposal would permit state-chartered credit unions that are converting to a federal charter and that had an established history of being able to serve multiple groups outside of its operational area to continue to serve these groups without regard to the operational area requirements normally applicable to new federal multiple group charters. Three commenters supported the change but suggested that the concept of operational area be discarded in favor of non-geographic criteria. One commenter opposed relaxing the rules for converting state charters.

B. NCUA Board Decision

The Board believes that, with respect to converting state charters, where the commitment to the group and the ability to provide quality service have been demonstrated, there is no need to impose the operational area requirement. The final IRPS maintains this portion of the proposal. Moreover, the IRPS establishes the same flexibility for an occupational, associational, and multiple group federal credit union converting to a community charter.

XIII. Miscellaneous Matters

A. Staff Leasing

1. Comments

The proposal attempted to clarify NCUA's policy on staff leasing arrangements. The proposal stated that where the requirements of existing policy were met, the employees leased to a firm listed in a federal credit union's field of membership might be added as a common bond expansion. Where those requirements were not met, the elements of a select group expansion to serve employees of the leasing company had to be met. When a leasing company was to be included in a credit union's field of membership, the company had to identify each client and work location served by the leasing company.

Four commenters favored the leasing clarification. Five commenters disapproved of the clarification. These commenters believed that the requirement for specific delineation of each separate company that was a client of the employee leasing firm was both impractical and impossible from an operational standpoint.

2. NCUA Board Decision

On reconsideration, it is evident that general policy can be adequately adapted to the leasing company situation. Therefore, this portion has been deleted from the final IRPS.

B. Spin-offs, Mergers, and Purchase and Assumptions

1. Comments

The proposal clarified NCUA's policy on mergers, spin-offs and purchase and assumptions. Four commenters approved of the update on spin-offs. Three of these commenters specifically approved of the voting requirements for a spin-off. Seven commenters approved of the revised merger section. Three commenters approved of the provision to allow a merged state credit union's field of membership to be served by the continuing federal credit union even if the inclusion of this field of membership would otherwise be restricted under NCUA guidelines.

One commenter disapproved of the merger policy. This commenter believed that by applying an operational area condition to distress mergers, NCUA is limiting its own range of action. This commenter further stated that a suitable merger candidate may not be located within the operational area of a distressed credit union and that it seemed wasteful to wait for emergency conditions to evolve and moot the operational area issue.

One commenter suggested that NCUA should be able to put a credit union for which it is seeking a merger partner into temporary conservatorship, which would allow public notification and bidding from interested credit unions. In addition, this commenter stated that current merger procedures were left to the discretion of each regional office and suggested NCUA give serious consideration to standardizing procedures which would give all credit unions an opportunity to bid.

Four commenters suggested allowing community credit unions to merge with occupational, associational, or multiple group credit unions while still continuing to serve the former fields of membership of both credit unions. Two commenters requested that with respect to mergers, the final IRPS should clarify that when a state chartered credit union is merged into a federal credit union, the federal credit union would be allowed to retain the merged state chartered credit union's select employee groups, regardless of operational area, in order to assure the vitality of the federa credit union after the merger. Another commenter agreed with this suggestion and would expand it to all mergers, including mergers between federal credit unions.

2. NCUA Board Decision

The NCUA Board agrees that operational area limitations should not be an obstacle to merger of credit unions in distress situations, and believes this was Congress' intent in giving NCUA emergency merger authority. The Board has therefore interpreted Section 205(h) of the Federal Credit Union Act (12 U.S.C. 1785(h)) to permit authorizing as emergency mergers what have become known since IRPS 89–1 as distress mergers.

For the reasons stated earlier, however, the Board does not believe that the operational area limitation should be discarded entirely or that exercise of NCUA's conservatorship authority should become a standard part of the merger process.

C. Removal of Groups

1. Comments

The proposal clarified NCUA's policy on the removal of groups from a federal credit union's field of membership. Four commenters agreed with the clarification. One of these commenters suggested allowing the removal of a group when it does not respond to a federal credit union's repeated attempts to contact them.

2. NCUA Board Decision

The final IRPS incorporates this suggested change.

D. School Systems

1. Comments

The proposal clarified that employees of different school systems and different government units do not have the same primary sponsor. Therefore, the addition of the employees of a particular school district by a federal credit union serving employees of an adjoining school district would have to be done under the select group addition procedures. Three commenters concurred with this clarification. Two commenters disagreed with this proposal. They believed that school employees in different school districts may share the same common bond and they should be added under the common bond procedure.

2. NCUA Board Decision

The final IRPS deletes discussion of school systems. They will be analyzed under general common bond policy In

the vast majority of cases, different school systems will be considered different common bonds.

E. Industrial Parks

1. Comments

The proposal suggested modifying existing policy to permit field of membership expansions to include all employees of office complexes, industrial parks, shopping centers and similar establishments upon request from the leasing agent or similar authoritative figure. No overlap protection would be given to the expanding credit union and exclusionary clauses would be used to prevent injury to those credit unions serving a portion of these employees. Sixteen commenters favored this proposal. One commenter believed NCUA needs to identify other contacts beside the leasing agent.

Three commenters opposed this modification. One commenter stated that if NCUA adopted this modification, it should ensure that no overlap protection was given to the expanding credit union and that exclusionary language was incorporated into the bylaws of the expanding credit union to prevent possible injury to other credit unions which served the same employees. One commenter stated that this modification would cause numerous overlaps in fields of memberships.

2. NCUA Board Decision

The Board has decided to adopt this proposal with a modification. Although the proposal stated that exclusionary clauses would be used to protect overlapped credit unions, the Board believes that the member, in such cases, should have the ability to use the credit union which best serves his/her needs. In many cases it might be the industrial park type credit union that is more attractive to the individual. Therefore, in general, no overlap protection will be given to the credit union with the industrial park or similar complex in its charter. However, the regional director may, for safety and soundness reasons, provide overlap protection or require exclusionary clauses to prevent significant economic injury to other credit unions serving a portion of these employees.

Although NCUA has not specifically identified parties other than the complex leasing agent or owner, the final IRPS provides sufficient flexibility in this matter.

F. Outside Vendors

1. Comments

The proposal provided guidance on the safety and soundness concerns NCUA had with a credit union using outside parties, insurance agents and car dealers, among others, to recommend select group expansions. Three commenters approved of this addition. One commenter stated that this guidance should be expanded to include discussion of indirect lending.

2. NCUA Board Decision

The final IRPS includes the discussion on outside vendors and has been expanded to include indirect lending.

G. Approval of Officials

1. Comments

The proposal clarified that NCUA must approve all prospective officials and management personnel of a newly chartered credit union during the first two years. A few comments opposed this provision.

2. NCUA Board Decision

The Board has adopted the proposal in the final IRPS since the requirement is statutory; the reason for its inclusion in the IRPS is to be a reminder to credit union officials.

H. Appeal Rights

1. Comments

The proposal clarified the appeal rights for new charters and for those credit unions denied requests for a field of membership amendment, spin-offs and mergers. Eight commenters supported the appeal procedure. Nine commenters believed the appeal procedure was insufficient. Four of these commenters requested that appeals be sent directly to the central office and bypass the region. One commenter questioned whether central office staff would act independently of the regional director. One commenter stated the proposal was unclear on what rights of appeal an overlapped credit union had involving the field of membership of another credit union.

The appeal process in the proposal did not include a provision for oral argument. Six commenters agreed that oral argument before the Board was unnecessary. Fourteen commenters disagreed.

One commenter suggested the proposal clarify that a resubmission or additional information for consideration to the Regional Director within 90 days of a denial should be considered a new request for purposes of the appeal time limit. Furthermore, the commenter stated, if the resubmission was denied, the credit union should then have another 60 days to appeal.

2. NCUA Board Decision

The Board is currently undertaking a complete review of its appeal process. The final IRPS makes the agency's standard appeal process applicable.

I. Professional Organizations

1. Comments

The proposal included language to minimize potential conflicts of interest when adding certain professional organizations to the field of membership of a federal credit union. Four commenters concurred with the guidance provided when adding a professional organization to a field of membership.

2. NCUA Board Decision

The final IRPS includes this portion of the proposal.

J. Corporate Federal Credit Unions

1. Comments

The proposal clarified that corporate credit union chartering and field of membership issues were handled by the Office of Examination and Insurance. Four commenters agreed with the proposed change.

2. NCUA Board Decision

The final IRPS includes this portion of the proposal.

K. Appendix C—Type of Membership Classification System

1. Comments

One commenter stated the classification was fixed at the time of chartering and it was his understanding that it never changed. Furthermore, in recognition that the membership composition of a credit union can undergo substantial change over time, this commenter suggested a procedure be created to provide classification changes. Otherwise, this commenter believed classification related data would become increasingly flawed.

2. NCUA Board Decision

Since the coding is used for internal analytical purposes, Appendix C has been deleted from the final IRPS. As a note, the codes are changed periodically by NCUA staff.

L. Format of the Manual

1. Comments

One commenter was concerned with the terminology "field of membership

expansion." This commenter believed that all changes in the field of membership were not for the purpose of expansion and some field of membership "modifications" were based on considerations other than the mere decision of a credit union to expand. This commenter recommended replacing the term "expansion" with "modification." Two commenters believed the manual should be reorganized so it would be more accessible to the user.

2. NCUA Board Decision

The Board agrees that not all field of membership changes are expansions and therefore has replaced the term "expansion" with the term "amendment." The format of the proposed IRPS has been modified substantially in the final version. Additionally, the IRPS, when put in the form of a manual, will be indexed to make it easier to use.

Regulatory Procedures

Regulatory Flexibility Act

As was noted in the proposed IRPS, the NCUA Board has determined that changes to NCUA policy resulting from adoption of the IRPS will not have a significant economic impact on a substantial number of small credit unions (primarily those under $1 million in assets). The changes in the final IRPS clarify existing policy rather than create new restrictions. Therefore, a regulatory flexibility analysis has not been performed.

Paperwork Reduction Act

Paperwork requirement should decrease under the final IRPS. The information collection requirements contained in the IRPS have been submitted to the Office of Management and Budget (OMB) for approval. OMB is in the process of reviewing these requirements. A notice of OMB approval will be published in the **Federal Register** upon its receipt. Any comments regarding collection requirement should be forwarded directly to the OMB Desk Officer indicated below at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503; Attn.: Gary Waxman.

Executive Order

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final IRPS 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

Chartering, Conversions, Credit Union, Field of Membership Addition, Mergers by the National Credit Union Administration Board on May 12, 1994.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 701, supersedes 89–1 and establishes the following IRPS 94–1 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

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

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and 1798.

2. Section 701.1 is revised 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). The IRPS is incorporated into this regulation.

3. IRPS 89–1 is superseded by the following IRPS 94–1:

[Note: The following ruling will not appear in the Code of Federal Regulations.]

CHAPTER 1—FEDERAL CREDIT UNION CHARTERING

I—Goals of NCUA Chartering Policy

NCUA's chartering policies are directed toward achieving three goals:

- to uphold the provisions of the Federal Credit Union Act concerning granting federal charters
- to promote credit union safety and soundness
- to make quality credit union service available to all eligible groups who wish to have it.

NCUA may grant a charter to any group or combination of groups desiring credit union service where it finds:

- the group or groups possess an appropriate common bond;
- the subscribers are of good character and are fit to represent the group; and
- establishment of the credit union is economically advisable—i.e., it will be a viable institution and its chartering will not materially affect the interests of other credit unions or the credit union system.

Generally, these are the only criteria NCUA will look to. In unusual circumstances, however, NCUA may consider other factors, such as other federal law or public policy, in deciding if a charter should be approved.

II—Common Bond

Congress, in the Federal Credit Union Act, has recognized three types of federal credit union common bonds—occupational, associational, and community. A federal credit union may also consist of a combination of occupational, associational, and, in certain limited circumstances, community groups. For example, NCUA may charter a federal credit union consisting of employees of a local school district and members of a church group.

The Federal Credit Union Act and NCUA recognize that individual groups have their own common bond. All of the groups belonging to one particular credit union included in Section 5 of the credit union's charter make up the credit union's field of membership. If the charter is granted, the federal credit union will only be able to grant loans and provide services to persons within the groups defined in the field of membership.

If a federal credit union later wishes to add persons to its field of membership, it must comply with the procedures set forth in Chapter 2.

II.A—Occupational Common Bonds

II.A.1—General

A federal credit union may include in a single occupational common bond, regardless of location, any and all persons who share that common bond. NCUA permits a person's membership in an occupational common bond to be established in a number of 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 an occupational common bond of employees of the two 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.

A proposed federal credit union must supply documentation from as many authorized representatives as are needed

to establish that all persons to be included in a single occupational common bond are in fact linked in one of the ways described above.

An occupational common bond must include a geographic definitions, e.g., "employees, officials, and persons who work regularly under contract in Miami, Florida for ABC Corporation or any of these majority-owned subsidiaries. * * *" Other acceptable geographic definitions are: "employees of * * * who are paid from * * *" or "employees of * * * who are supervised from * * *" To the maximum extent possible, setting geographic definitions by changeable corporate or division boundary—e.g., "employees of Federal Reserve District 6"—is to be avoided.

So that NCUA may monitor any potential field of membership overlaps, each group to be served (e.g., employees of subsidiaries, franchisees, and contractors) may be separately listed.

The employer may also be included in this common bond—e.g., "ABC Corporation and its subsidiaries." The employer group will be defined in the last clause describing the field of membership.

II.A.2—Sample Occupational Fields of Membership

Some examples of occupational group definitions are:

- "Employees of the Scott Manufacturing Company who work in Chester, Pennsylvania. * * *" (common bond—same employer)
- "Employees and elected and appointed officials of municipal government in Parma, Ohio. * * *" (common bond—same employer)
- "Employees of Johnson Soap Company and its majority-owned subsidiary, Johnson Toothpaste Company, who work in Augusta and Portland, Maine. * * *" (common bond—parent and majority-owned subsidiary company)
- "Personnel of fleet units of the U.S. Navy home ported at Mayport, Florida. * * *" (common bond—same employer)
- "Department of Defense civilian and U.S. Army personnel who work or are stationed at, or are attached or assigned to Fort Belvoir, Virginia, or those who are retired from, or their dependents or dependent survivors who are eligible by law or regulation to receive and are receiving benefits or services from, that military installation. * * *" (common bond—same employer)
- "Employees of those contractors who work regularly at U.S. Naval Shipyard in Bremerton, Washington. * * *" (common bond—employees of contractors)
- "Employees, doctors, medical staff, technicians, medical and nursing students who work at Boston Medical Center at the locations stated: * * *" (common bond—same employer)
- "Employees and teachers who work for the School District Number 3 in Austin, Texas * * *." (common bond—same employer)
- "Employees of the JKL Employee Leasing Company who are paid from Lake Charles, Louisiana * * *." (common bond—same employer)
- "Employees of JKL, Inc. and STU, Inc. working for the XYZ Joint Venture Company in Los Gatos, California * * *."

Some examples of insufficiently defined occupational groups are:

- "Employees of engineering firms in Seattle, Washington." (Not the same occupational common bond, since various firms compete against one another; names of firms must be stated; however, may be the basis for a multiple group charter.)
- "Persons employed or working in Chicago, Illinois." (No common bond; names of firms must be stated.)
- "Persons working in the entertainment industry in California." (No occupational common bond, since firms compete against one another; names of firms must be stated.)

II.B—Associational Common Bonds

II.B.1—General

A federal credit union may include in its field of membership, regardless of location, all members of a recognized association.

NCUA limits this common bond to groups consisting primarily of individuals (natural persons) who participate in activities developing common loyalties, mutual benefits, and mutual interests. Except for student, church, and similar groups, all associational common bonds will include a definition of the group that may be served based on the effective date of the association's charter and bylaws and a geographic limitation. Therefore, with the exceptions noted above, applicants for an associationally-based federal credit union charter must provide a copy of the association's charter and bylaws.

Qualifying associational groups must hold meetings open to all natural person members at least once a year, must sponsor other activities which clearly demonstrate that the members of the group meet and interact regularly to accomplish the objectives of the association, and must have an authoritative definition of who is eligible for membership—usually, this will be the association's charter and bylaws.

In determining whether a group satisfies the common bond requirement for a federal credit union charter, NCUA will consider the totality of the circumstances—such as whether members pay dues, have voting rights, and hold office, whether the group maintains a membership list, the clarity of the associational group's definition and compactness of its membership, and the frequency of meetings and the interaction of members. A support group, whose members are continually changing, may not meet the criteria.

NCUA's focus with respect to chartering associational federal credit unions will be on the group's natural person members. In certain instances, however, NCUA will also allow non-natural persons (e.g., corporate sponsors, entities participating in programs to alleviate poverty and distress, or organizations of members) to be eligible for membership. It is not necessary that every non-natural person member of the group be a recognized legal entity; NCUA will consider such groups on a case-by-case basis.

Student groups—for example, parent-teacher organizations, alumni associations, and students in a trade school or other curriculum—and church groups constitute associational common bonds and may qualify for a federal credit union charter. Since such groups usually do not have a formal association charter, there is no requirement for these groups to provide a charter or bylaws.

Homeowners associations, tenant groups, electric co-ops, consumer groups and other groups of persons having an "interest in" a particular cause and certain consumer cooperatives may be eligible to receive a federal charter. However, they must make a strong showing of common activities which clearly demonstrate that the group meets and interacts regularly to accomplish the objectives of the association. Furthermore, they must provide clear evidence of economic viability.

Newly-organized associations must make a similar strong showing of common activities. Experience has shown that a new group's efforts are best focused on solidifying member interest before attempting to offer credit union service.

The associational sponsor itself may also be included in the field of membership—e.g., "ABC Association"—and will be shown in the last clause of the field of membership.

II.B.2—Subsequent Changes to Association's Bylaws

If the association's membership or geographical definitions in its charter and bylaws are changed subsequent to the effective state dated in the field of membership, the credit union must submit the revised charter or bylaws for NCUA's consideration prior to serving members of the association added as a result of the change. This type of field of membership amendment will require following select group amendment procedures discussed in Chapter 2.

II.B.3—Widely Dispersed Associational Charters

NCUA policy is to charter associational federal credit unions at the lowest organizational level which is economically feasible. NCUA will grant associational charters with widely dispersed memberships only where clearly demonstrated to be in the best interests of the association's members and the credit union community, and only after scrutinizing the adequacy of the applicant's common bond and the economic advisability of a more compact field of membership. NCUA, in its discretion, may require that the proposed field of membership be narrowed before granting a new charter. Amendment to include a larger portion of the association's members may be allowed at a later time, if appropriate.

Also, as with any widely dispersed group, overlap issues are likely to arise, either at the time of or subsequent to chartering. NCUA will consider the effect that granting a charter with such a group in its field of membership would have on any number of existing credit unions. In addition, an associational credit union with a widely dispersed membership may expect overlaps, particularly at the local level, to be granted to other credit unions in the future.

In recognition of these unique circumstances, NCUA follows a separate internal procedure for associational charter applications for associations with proposed fields of membership of 500 or more persons which cross NCUA regional boundaries. NCUA's Director of Examination and Insurance and all NCUA regional directors with any of the association's members located in their region must vote on the charter application. A majority vote is required for approvals. Tie votes are referred directly to the NCUA Board for decision.

II.B.4—Limits of Associational Common Bond

Except for retiree clubs and low-income groups (discussed below), associations formed primarily to obtain a federal credit union charter do not have a sufficient associational common bond. Similarly, associations based on a client-customer relationship—for example, an insurance company and its customers or a buyer's club and its members—do not have a sufficient associational common bond.

The common bond extends only to the association's members. The employees of a member of a local chamber of commerce, for example, do not have a sufficiently close tie to the association to be included. A proposal to include these persons among those to be served by the federal credit union may be considered as a multiple-group charter application. In such cases, letters of support and request for service must be provided from each separate entity.

II.B.5—Sample Associational Fields of Membership

Some examples of associational group definitions are:

- Regular members of Locals 10 and 13, IBEW, Miami, Florida, who qualify for membership in accordance with their charter and bylaws in effect on May 20, 1994."
- "Members of the Hoosier Farm Bureau who live or work in Grant, Logan, or Lee Counties of Indiana, who qualify for membership in accordance with its charter and bylaws in effect on March 7, 1994."
- "Members of the First Baptist Church in Topeka, Kansas."
- "Members of the Shalom Congregation in Chevy Chase, Maryland."
- "Regular members of the Corporate Executives Association, located in Westchester, New York, who live or work in Westchester, Rockland, and Suffolk Counties in New York, who qualify for membership in accordance with its charter and bylaws in effect on December 1, 1994."
- "Members of the Northern Michigan Electric Co-op located in Marquette, Michigan."
- "Members of the ABC Association living or working in New York, New York, who qualify for membership in accordance with its charter and bylaws in effect on January 21, 1994." Some examples of insufficiently defined associational group definitions are:
- "Members of military service clubs in the State of New Mexico." (No single associational tie; specific clubs and locations must be named; may be considered as multiple group.)
- "Veterans of U.S. military service." (Group is too broadly defined; no formal association of all members of the group.)

Some examples of unacceptable associational common bonds are:

- "Members of ABC Buyers Club." (An interest in purchasing does not meet associational standards.)
- "Customers of ABC Insurance Company." (Policyholders or customer/client relationships do not meet associational standards.)

II.C—Community Common Bonds

II.C.1—General

Congress requires that a credit union charter based on a tie to a specific geographic location be limited to "a well-defined neighborhood, community, or rural district." NCUA policy is to limit the community to a single, geographically well-defined area where residents interact.

NCUA recognizes three types of affinity on which a community common bond can be based—persons who live in, persons who worship in, and persons who work in the community Businesses and other legal entities within the community boundaries may also qualify for membership. Given the diversity of community characteristics throughout the country and NCUA's goal of making credit union service available to all eligible groups who wish to have it, NCUA has established the following common bond 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 distinct "neighborhood, community, or rural district."

II.C.2—Special Documentation Requirements

Information to support that the area chosen represents one well-defined area, distinguishable from the immediate surrounding areas, includes:

- political jurisdictions
- major trade areas (shopping patterns)
- traffic flows
- shared/common facilities (for example, educational, medical, police and fire protection, school district, water, etc.)
- organizations/clubs whose membership is made up exclusively of persons within the area
- newspapers or other periodicals published for and about the area
- census tracts
- common characteristics and background of residents (for example, income, religious beliefs, primary ethnic groups, similarity of occupations, household types, primary age group, etc.)

- history of area
- in general, what distinguishes the chosen area and its residents to be distinguishable from the immediate surrounding areas and residents—some examples are old, well established ethnic neighborhoods, planned communities and small/rural towns

The following information must be provided to support a need for a community credit union:

- a list of credit unions presently in area
- a list of other financial institutions (for example, banks, savings and loan associations) that service the area

Necessary written documentation (for example, letters, surveys, studies, pledges, petitions) reflecting support for the application for or the conversion to a community credit union is as follows:

- For the residents of the area:
- Approximate number contacted.
- Number in favor of the credit union.
- Number against the credit union.
- Number who will join the credit union.
- Number who have pledged initial and/or systematic savings and amount of pledges.
- For the employers:
- Number of area employers and number of employees.
- Number contacted.
- Number in favor of the credit union.
- Number against the credit union.
- Number willing to provide payroll deductions to the credit union.
- Number willing to provide other type(s) of support to the credit union.
- For organizations (including churches):
- Number in areas and number of members.
- Number contacted.
- Number in favor of the credit union.
- Number against the credit union.
- Number willing to provide some type of support to the credit union, i.e., advertising facilities, etc.
- letters of support from area civic leaders.

If the community is also a recognized legal entity, it may comprise or be included in the field of membership—for example, "DEF Township, Kansas" or "GHI County, Minnesota."

II.C.3—Community Service Area

The service area of a community federal credit union is the area defined in its charter, usually with north, east, south, and west boundaries.

II.C.4—Sample Community Fields of Membership

Some examples of community common bond definitions are:

- "Persons who live or work 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 or work in and businesses and other legal entities located in Independent School District No. 1, DuPage County, Illinois. . . ."
- "Persons who live or work within a twenty mile radius of the main post office in Walnut, Illinois. . . ." (Rural areas only.)

Some examples of insufficiently defined community common bond definitions are:

- "Persons who live or work within and businesses located within a ten-mile radius of Washington, DC." (Not a recognized neighborhood, community, or rural district.)
- "Persons who live or work in the industrial section of New York, New York." (Not a recognized neighborhood, community, or rural district.)

II.D—Multiple Occupational/ Associational Common Bonds

II.D.1—General

NCUA may charter a federal credit union to serve a combination of distinct, definable occupational and/or associational common bonds. For a common bond which will constitute a majority of the federal credit union's field of membership, the requirements for occupational and associational fields of membership apply. Any other group constituting an occupational or associational common bond to be included within the federal credit union's field of membership must be within what will be the credit union's operational area.

A proposed federal credit union's operational area is the area which, as determined by NCUA in its sole discretion, may reasonably be served by the service facilities that will be accessible by the groups to be included in the field of membership when the credit union begins operation. A credit union's service facility is a place where, also as determined by NCUA in its sole discretion: (1) Shares are accepted for members' accounts; (2) loan applications are accepted or loans are disbursed; (3) a member can deal directly with a credit union representative; and (4) the service provided is clearly associated with that particular credit union. An automated teller machine or similar device is not a federal credit union service facility. Similarly, a branch or service center shared by a number of credit unions is not a service facility for purposes of this Chapter.

Any members of a group who will have access to one of a proposed federal credit union's service facilities may be included in the field of membership. In addition, the group as a whole will be considered to be within a proposed credit union's operational area when:

- A majority of the group's members live, work, or gather regularly within the operational area;
- The group's headquarters is located within the operational area; or
- The group's "paid from" or "supervised from" location is within the operational area.

The following special additional requirements pertaining to multiple group applications must be satisfied before NCUA will grant such a charter:

- Each group to be included in the proposed field of membership of the federal credit union must have its own occupational or associational common bond.
- Except for employee groups in the same industrial park, shopping center or similar facility, each group must individually request inclusion in the proposed federal credit union's charter.
- The proposed federal credit union's business plan must show that the credit union will possess the financial resources and management capability to provide quality credit union service to each group.
- The proposed federal credit union must show that, when it begins operations, each group to be added will be within the operational area of a service facility to which the group will have access.

II.D.2—Sample Multiple Group Field of Membership

An example of a multiple group field of membership is: "The field of membership of this federal credit union shall be limited to the following:

1. Employees of Dupont Corporation who work in Wilmington, Delaware;
2. Partners and employees of Smith & Jones, Attorney at Law, who work in Wilmington, Delaware;
3. Members of the GHI Association who live in Wilmington, Delaware, and qualify for membership in accordance with its charter and bylaws in effect on December 31, 1994.

II.D.3—Additional Documentation

For multiple group charters, NCUA will need the following, in addition to what is required for new charters generally:

- For each group seeking to be included in the proposed federal credit union's field of membership, the credit

union must provide a letter from the group, on the group's letterhead stationery and signed by an official representative of the group wherever possible, or if that is not possible, such other documentation or certification as the regional director may, in his or her discretion, deem appropriate, containing this information:

- The fact that the group wants to obtain service from the proposed federal credit union, the kind of service it desires and the credit union has agreed to provide, and the extent to which the group supports the credit union—e.g., by providing access to its employees or members via payroll deduction, by permitting use of employee or members' newsletter, etc.
- The number of employees or members in the group.
- The proximity to the proposed federal credit union's closest service facility.
- The name of any credit union to which the group currently has access.
- The group's headquarters location and all other work locations the credit union is proposing to serve.
- If the group is eligible for membership in another credit union, documentation must be provided to support inclusion of the group under the standards set forth in the "Overlaps" section of this chapter.

II.E—Other Persons Sharing Common Bond

A number of persons by virtue of their close relationship to a common bond group may be included, at the charter applicant's option, in the field of membership. These include the following:

- "Spouses of persons who died while within the field of membership of this credit union."
- "Employees of this credit union."
- "Persons retired as pensioners or annuitants from the above employment."
- Members of their immediate families."
- "Volunteers."
- "Organizations of such persons."

"Members of their immediate families" may be generally defined as deemed appropriate by a federal credit union when including this group among those to be served. To be made effective, however, the federal credit union's board of directors must approve the definition by resolution, and include it in Article XVIII, Section 2, of its by-laws. NCUA approval is not necessary.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. Examples include volunteers working at a hospital or church.

Under Article II, Section 5, of NCUA's Standard Bylaws, if a member leaves the field of membership, standard member services are terminated. However, the board of directors may, by resolution, set forth the circumstances under which a member may maintain membership. This option is commonly referred to as the "once a member, always a member" bylaw provision. NCUA approval is not necessary here, either.

III—Subscribers

Federal credit unions are organized by persons who donate time and resources and are responsible for determining the interest, commitment, and advisability of forming a federal credit union. The organization of federal credit union takes considerable planning and dedication in order to ensure the success of the new credit union.

Persons interested in organizing a federal credit union should contact the NCUA regional office serving the state in which the credit union will be organized or one of the trade associations. Lists of NCUA offices and trade associations are shown in the appendices. NCUA will provide information to groups interested in pursuing a federal charter and will assist them in contacting an organizer.

A credit union organizer may be a trade association representative or a person with training and experience in chartering new federal credit unions. The functions of the organizer are to provide direction, guidance, and advice on the chartering process. The organizer also provides the group with information about a credit union's functions and purpose as well as technical assistance in preparing and submitting the charter application. Close communication and cooperation between the organizer and the group members are critical to the chartering process.

The Federal Credit Union Act requires that seven or more natural persons—the "subscribers"—must present to NCUA for approval a sworn organization certificate stating at a minimum:

- The name of the proposed federal credit union.
- The location of the proposed federal credit union and the territory in which it will operate.
- The names and addresses of the subscribers to the certificate and the number of shares subscribed by each.
- The initial par value of the shares.
- The detailed proposed field of membership.
- The term of the existence of the corporation, which may be perpetual.
- The fact that the certificate is made to enable such persons to avail themselves of the advantages of the Federal Credit Union Act.

False statements on the organization certificate may be grounds for federal criminal prosecution.

IV—Economic Advisability

IV.A—Viability

IV.A.1—General

Before chartering a federal credit union, NCUA must be assured that the institution will be viable and that it will not materially affect existing state or federal credit unions. This economic advisability inquiry has become especially important since 1970, when Congress assigned NCUA the obligation to establish a fund insuring credit union members' shares and to preserve that fund.

NCUA will conduct an independent on-site investigation of each charter application to assure itself that the proposed credit union can be successful. In general, the success of any credit union depends on: (a) the depth of the members' support; (b) the character and fitness of management; and (c) present and projected market conditions.

IV.A.2—Proposed Management's Character and Fitness

The Federal Credit Union Act requires NCUA to satisfy itself as to the "general character and fitness" of the subscribers. In addition, prospective officials and employees will be the subject of credit and background investigations. The investigation reports must demonstrate their ability to effectively handle financial matters.

NCUA also needs assurance that the management team will have the requisite skills—particularly in leadership and accounting—and the commitment to dedicate the time and effort needed to make the proposed federal credit union a success.

IV.A.3—Member Support

While NCUA has not set a minimum size field of membership for chartering a federal credit union, experience has shown that a credit union with under 500 potential members generally is unlikely to succeed. Therefore, a charter applicant with a proposed field of membership of under 500 will have to demonstrate convincing support for the credit union. For example, a small occupational group must demonstrate a commitment for significant long-term support from the employer.

The group's size is meaningful only if members participate in the credit union. The charter applicant must show that a substantial percentage of the group's

members will join the credit union and use its services. Survey results must be based, at a minimum, on a sampling of 250 potential members. In particular instances, especially where the common bond is broadly defined or newly established, NCUA may require a larger sampling.

IV.A.4—Present and Future Market Conditions—Business Plan

IV.A.4.a—General

The ability to compete in the marketplace and to adapt to changing market conditions is key to the survival of any enterprise, and a crucial part of that is the ability to plan well. NCUA, therefore, requires an applicant to submit a business plan based on realistic and supportable projections and assumptions, including, as a minimum, these elements:

- Mission statement.
- Analysis of market conditions—economic prospects for the group, availability of financial services from other credit unions, banks, and savings and loans.
- Summary of survey results.
- Financial services needed/desired.
- Financial services to be provided.
- How/when services are to be implemented.
- Staffing of credit union and credentials of key employees.
- Physical facility—office, equipment.
- Type of recordkeeping system, including consideration of a data processing system.
- Budget for 1st and 2nd year.
- Semiannual pro forma financial statements for 1st and 2nd year, including assumptions—e.g., loan and dividend rates.
- Goals for number of members.
- Goals for operating independently.
- Source of funds to pay expenses during initial months of operation.
- Written policies (shares, lending, investments, funds management, capital accumulation, dividends).
- Goals for shares and loans.
- Plan for continuity—directors, committee members.
- Evidence of sponsor commitment if subsidies are critical to success of the federal credit union—evidence may be in the form of letters, contracts, or any other such document on which the proposed federal credit union can substantiate its projects.

NCUA expects that the subscribers and proposed officials will understand and support the business plan submitted.

IV.A.4.b—Special Requirements for Community Credit Unions

Community credit unions are frequently more susceptible to competition from other local financial institutions and generally do not have substantial support from any single sponsoring company or association. Also, the lack of payroll deduction creates special challenges in the development of savings promotion programs and in the collection of loans. Therefore, it is essential for the group to develop a detailed and practical business plan for at least the first three years of operation. The business plan should contain, but not necessarily be limited to, the following:

- Analysis of market area—geographic, demographic, employment, income, housing, and economic data.
- Service/market strategy—financial and other services to be provided, new member/share/loan promotion policies and procedures and income generation strategy.
- Organizational/management plan—qualification and planned training of officials/employees, operating facilities to include office space/equipment and supplies, accounting system, safeguarding of assets, insurance coverage, etc.
- Financial plan—sources and application of funds statements and pro forma balance sheet and income/expense statements and assumptions.

IV.B—Effects on Other Credit Unions—Overlaps

(This discussion pertains to new and existing charters.)

IV.B.1—Overlaps In General

An overlap exists when a group of persons is eligible for membership in two or more credit unions, including state charters. General policy requires that every reasonable effort be made to avoid an overlap. Ideally, a group of persons should be included in the field of membership of only one credit union.

New credit unions are obligated to investigate the possibility of an overlap prior to submitting an application for a new charter by surveying the prospective field of membership.

When a potential overlap situation does arise, officials of the involved credit unions must attempt to work the problem out between or among themselves. In the case of a new federal credit union applying for or converting to a community field of membership, the applicant will generally be required to contact only those credit unions with a service facility within the community boundary. Other credit unions serving select groups within the proposed area will not ordinarily be contacted or afforded overlap protection unless a significant portion of their field of membership is affected. If the matter is resolved informally, the applicant must submit a letter to that effect from the credit union whose field of membership already includes the subject group.

If no resolution is possible, an application for a new charter may still be submitted, but must also include information regarding the overlap and document attempts at informal resolution. Documentation on the interests of the group, such as a petition signed by a majority of the group's members, will be strongly considered.

When resolution of the issue is not possible, and other circumstances warrant, an overlap may be permitted. Among the circumstances which may justify an overlap are:

- Failure of the original credit union to provide quality service.
- Limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time.
- Incidental overlap—the group of persons in question is so small as to have no material effect on the original credit union.

In reviewing the overlap, the regional director will consider the nature of the issue, efforts made to resolve the matter, financial effect on the overlapped credit union, the desires of the group(s), the desire of the sponsor organization, the opinion of the state credit union supervisor and other interested parties, as applicable, and the best interests of the affected group and the credit union members involved.

Potential overlaps of a state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. However, where a state credit union's field of membership is so general as to include virtually everyone in a wide area, NCUA may exclude any state credit union from overlap protection altogether just as it would with a federal credit union with a broadly defined field of membership. Prior to making that decision, the regional director will consult the credit union and the state regulator. Any decision by the regional director will be provided in writing to the credit union and the state regulator.

Generally, NCUA will permit federal credit unions serving occupational groups to overlap associational and community charters. However, should the proposed overlap pose significant safety and soundness concerns, NCUA may provide overlap protection for any type charter. For example, labor union

groups constitute an associational common bond, and while some labor unions serve members who work regularly for several employers, others have members who work for only one employer. In these latter cases, overlap protection may be provided if a substantial portion of the company's employees are served by the credit union.

Some situations may not justify approval of a requested overlap. For example, if the requesting credit union offers certain specialized services not offered by the original credit union (such as credit cards, ATMs, and IRAs), the extra services alone may not justify the overlap. Also, proximity, by itself, may not warrant approval of an overlap. A federal credit union in Chicago, Illinois, may not have a convincing argument, based on geography alone, that a select group also located in Chicago would be better served by it than by the select group's headquarters credit union located in Dallas, Texas.

From an overlap prevention perspective, new charter applicants and every occupational or associational group which comes before the regional director for affiliation with an existing federal credit union must advise in writing whether the group is included within the field of membership of any other credit union. This requirement will alert the regional director to possible overlap situations before they occur. Most potential field of membership conflicts can be avoided in this way. If cases do arise where the assurance given to a regional director concerning unavailability of credit union service turns out later to be inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

IV.B.2—Overlap Issues as a Result of Organizational Restructuring

A federal credit union's field of membership will always be governed by the group descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of a group described in Section 5. Where acquisitions are made which add a new wholly-owned or majority-owned subsidiary, the group cannot be served until the subsidiary is included in the field of membership.

Overlaps may occur as a result of restructuring of the parent organization. Credit unions affected by organizational restructuring are required first to attempt to resolve overlap issues among themselves. Once the affected credit unions reach agreement, they must apply to NCUA for a modification of their fields of membership to reflect the groups each will serve.

In addition, credit unions must submit to NCUA correspondence from the parent organization explaining the restructuring and providing information regarding the new organizational structure. To help in future monitoring of overlaps, the organizational structure should identify divisions and subsidiaries and the location and number of employees at each location.

Overlaps may also occur as a result of the parent organization's merger. NCUA's general policy of avoiding overlaps applies to those resulting from corporate mergers as well. Affected credit unions must make every reasonable effort to identify up front and address the overlap issue raised by parent corporation mergers and must attempt to resolve any differences among themselves. In those rare cases which require NCUA's intervention, all attempts to resolve the issues must be fully documented by the affected credit unions.

Affected credit unions should consider consolidation (merger) of institutions as a possible alternative to dividing up the field of membership, particularly if safety and soundness concerns exist or future viability is in question. A federal credit union which has a broad based field of membership generally has a better chance of survival when a sponsor restructures or closes.

While neutral, NCUA will make the final decision regarding field of membership amendments, taking into account the credit unions' agreements, safety and soundness concerns, the desires of the members, the significance of the overlap and other relevant issues.

NCUA will be flexible when working with credit unions affected by parent corporation mergers and divestitures. Where no other credit union service is available and the sponsor and its employees desire to continue service, NCUA may use wording such as the following:

"Employees of XYZ Corporation, formerly a subsidiary of ABC, Incorporated, located in Charleston, South Carolina. . . ."

IV.B.3—Overlaps-Exclusionary Clauses

This discussion pertains to new and existing charters.)

Where two credit unions agree and/or NCUA has determined that an overlap should be avoided, this decision may need to be memorialized in a federal credit union's charter through an exclusionary clause. Examples of exclusionary wording are:

- Persons who work for Hilo Sugar Company, except those who work in or are paid from or are supervised from San Francisco, California.
- Persons who work for the ABC Co., except those employed by the XYZ Division as of June 30, 1994.
- Persons who work for the ABC Co., except those who were members of the XYZ Federal Credit Union as of June 30, 1994.

Exclusionary clauses are very difficult for credit unions and NCUA to monitor properly. To minimize this difficulty, NCUA generally does not require federal credit unions to apply exclusionary clauses to persons eligible for membership in another credit union simply because they are one of the "other persons sharing common bond" listed in Section II.E of this Chapter.

Moreover, if phrased improperly or used in situations for which they are not suited, exclusionary clauses can be ineffective or create obvious inequities—one spouse may be eligible for membership in a federal credit union while the other may not; one employee may be eligible for credit union service while the person working next to him or her may not. For this reason, exclusionary clauses are rarely if ever appropriate for inclusion in a community charter's field of membership as a way to resolve overlap concerns.

One example of an appropriate use of an exclusionary clause may be where there is a merger of two corporations served by two credit unions which will continue to serve their groups as they had prior to their sponsors' consolidation. Addition of an exclusionary clause to the field of membership of one or both of the credit unions may be the best way to clarify the division of service responsibility within the new corporate entity.

When an exclusionary clause is included in a federal credit union's field of membership, NCUA will strive to define as precisely as possible:

- The identity of the group to be excluded;
- Whether the exclusion is to apply to the entire group or only to those who are actually members of another credit union; and
- Whether the exclusion is to apply only to the current members of the group or to future members as well.

V—Special Situations

There are some instances where, because of overriding policy, special common bond rules apply. To ensure quality service to as many low-income and senior citizens as possible, NCUA has established broader common bond

rules for federal credit unions seeking to serve those groups. Further, to expedite service to groups in industrial parks, shopping centers, and similar areas, the documentation requirements for federal credit unions seeking to serve these groups have been simplified. Finally, to ensure consistency throughout the credit union movement, NCUA has centralized decision making for the corporate credit union program in the Central Office.

V.A—Low-Income Credit Union Groups

V.A.1—General

A low-income credit union is defined in Part 701.32 of the NCUA Rules and Regulations as one where a majority of its members either earn less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics, or whose annual income falls at or below 80 percent of the median household income for the nation. In documenting its low-income membership, a credit union that serves a geographical area where a majority of residents fall at or below the annual income standard is presumed to be serving predominantly low-income members.

A credit union designated by NCUA as serving predominantly low-income members has greater flexibility in accepting non member deposits insured by the National Credit Union Share Insurance Fund. It also may participate in special funding programs such as the Community Development Revolving Loan Program for Credit Unions if it is involved in the stimulation of economic development and community revitalization efforts. A credit union participating in the revolving loan program is also eligible for technical assistance. The requirements for participation in the revolving loan program are set forth in Part 705 of NCUA's Regulations. Only operating credit unions are eligible for participation in the revolving loan program.

A federal credit union charter applicant meeting the definition of a low-income credit union should forward a separate request for low-income designation, along with appropriate documentation, at the time the charter application is submitted. A charter applicant's low-income designation will be based on its primary field of membership and not on its actual members as is the practice for operating credit unions. In most cases, if the credit union qualifies, NCUA will grant the charter and low-income designation simultaneously.

A low-income federal credit union charter applicant may contract with a third party to assist in the chartering process. Even after the charter is granted, a low-income credit union may contract with a third party to provide necessary management services. Such contracts should be for a duration of one year subject to renewal. However, within three years of commencement of operations, the credit union should no longer require such services.

V.A.2—Special Common Bond Rules for Low-Income Federal Credit Unions

Generally, a low-income credit union is chartered as a community or associational credit union. A low-income credit union that has a community common bond may include the following language in its field of membership:

"Persons who live in [the target area]; persons who regularly work, worship, perform volunteer services, or participate in associations headquartered in [the target area]; persons participating in programs to alleviate poverty or distress which are located in [the target area]; incorporated and unincorporated organizations located in [the target area] or maintaining a facility in [the target area]; and organizations of such persons."

In recognition of the special efforts needed to help make credit union service available to persons in low-income communities, NCUA permits credit union chartering and field of membership amendments based on associational groups formed for the sole purpose of making credit union service available to low-income persons. The association must be defined so that all its members will meet the low-income definition of Part 701.32 of NCUA's Regulations. The association, in documenting its low-income membership, may use the same types of documentation as is currently permitted for determining whether a community is low-income under Part 701.32 of NCUA's Regulations.

In addition, a proposed low-income community or associationally based federal credit union may include in its field of membership, without regard to location, another group constituting an occupational, associational or community common bond. Except for the operational area requirements, the proposed credit union must meet all the requisites for including the group in its charter. Moreover, the proposed credit union must take care to ensure that it will continue to meet the requirements for low-income status.

V.A.3—Special Common Bond Rules for Other Federal Credit Unions Seeking to Serve Low-Income Persons

In the interest of making credit union service available to persons in low-income communities, NCUA also permits any occupational, associational, multiple group, or community federal credit union to include in its field of membership, without regard to location, communities and associational groups satisfying the low-income definition of Part 701.32 of NCUA's Regulations. The associational group may be formed for the sole purpose of providing eligibility for federal credit union service, but must comprise only persons meeting NCUA's low-income definition.

The federal credit union adding the low-income community or association must document that the community or association meets the low income definition in Part 701.32 of NCUA's Regulations, just as is required for a designated low-income credit union. A federal credit union adding such a community or association, however, would not be able to receive the benefits, such as expanded use of non member deposits and access to the Community Development Revolving Loan Program for Credit Unions, offered to low-income credit unions.

A federal credit union that desires to include a low-income community or association in its field of membership must first develop a business plan specifying how it will serve the entire low-income community. The business plan, at a minimum, must identify the credit and depository needs of the low-income community or association and detail how the credit union plans to serve those needs. The credit union will be expected regularly to review the business plan as well as loan penetration rates in the community to determine if the community is being adequately served. NCUA will require periodic service status reports on its service to the low-income community and may review the credit union's service to low-income persons during examinations.

V.B—Retiree and Senior Citizen Groups

Special common bond rules also apply for providing service to retiree and senior citizen groups. It is NCUA policy to encourage federal credit unions to bring credit union service to senior citizens (aged 50 and over) and retired persons. To help in this effort, federal credit unions may form associations of such persons for the sole purpose of providing eligibility for credit union service. Except for the minimum age requirement of 50, the

definition of a senior citizen is left to the credit union's discretion. Moreover, the only documentation requirement for including such an association in a federal credit union's charter is a written request from the credit union; no request from the group or copy of the association's charter or bylaws will be needed. In all other respects, however, the requirements for including an association in a federal credit union's field of membership apply, including those relating to the credit union's operational area.

V.C—Employees at Industrial Parks, Shopping Centers, and Similar Areas

A federal charter may include in its field of membership persons working in a particular industrial park, shopping mall, office complex, or similar development either through a community or multiple group charter.

If the multiple group option is selected, NCUA permits the credit union to satisfy the requirement for a request from each of the groups through a request by the complex owner, leasing agent, or similar responsible official. The complex owner, leasing agent or similar official must provide information regarding credit union service available to any segment of the proposed select group amendment or proposed federal credit union. It is up to the applicant credit union to investigate whether credit union service is already available to any segment of the select group amendment or proposed charter.

In general, exclusionary clauses will not be used to protect any overlapped credit union. However, in those cases where each employee group in the complex has not specifically requested credit union service, NCUA may exercise broad discretion in addressing overlaps with other credit unions and any request from a group to be removed from the field of membership.

The following or similar wording will be used to define groups added under this procedure: "Employees who regularly work in the Plaza Mall, New Orleans, Louisiana"

If the community option is selected, the industrial park, shopping center, or office complex must meet the standards for community charters.

V.D—Corporate Federal Credit Unions

A corporate credit union is defined as one that:

- is operated primarily for the purpose of serving other credit unions,
- is designated by the NCUA as a corporate credit union, and
- limits natural person members to the minimum required by state or federal law to charter and operate the credit union.

Corporate credit unions operate under and are governed by standards different from those applicable to natural person credit unions. These standards are set forth in part 704 of NCUA's Regulations.

Supervision of corporate credit unions is the responsibility of NCUA's Office of Examination and Insurance. All applications for federal corporate charters as well as requested changes to section 5 of the charter of existing corporate federal credit unions should be directed to that office.

VI—Name Selection

It is the responsibility of the federal credit union organizers to ensure that the federal credit union applicant's name or federal credit union name change does not constitute an infringement on the name of any corporation in their trade area. This responsibility also includes researching any service marks or trademarks used by any other credit union in their trade area. NCUA will ensure, to the greatest extent possible, that the credit union's name:

- is not already being officially used by another federal credit union;
- will not be confused with NCUA or another federal or state agency, or with another federal credit union; and
- does not include inappropriate language.

The last three words in the name of every credit union chartered by NCUA must be "Federal Credit Union."

VII—Steps To Take To Organize a Federal Credit Union

VII.A—Getting Started

Following the guidance contained throughout this policy, the organizers should submit the proposed field of membership to NCUA early in the process for written tentative approval.

Once the field of membership has been tentatively approved, and the organizer is satisfied the application has merit, the organizers should conduct a preliminary organizational meeting to elect seven to ten persons to serve as subscribers. The subscribers should locate willing individuals capable of serving on the board of directors, credit committee, supervisory committee, and as chief operating officer/manager of the proposed credit union.

The organizers and subscribers should arrange for any meetings necessary to develop the business plan discussed in section IV.A.4 of this chapter and to complete the documentation for submittal to NCUA. Each of the required documents is discussed more fully later in this chapter.

The organizers and subcribers must apply for insurance of member accounts. The Certificate of Resolutions (NCUA 9501) will be executed by the prospective chief executive officer and recording officer. Following action on this issue, the prospective chief executive officer and chief financial officer will execute the Application and Agreements for Insurance of Accounts (NCUA 9500). These documents should be provided to NCUA as part of the charter application.

The organizers and subscribers should also complete an NCUA 4012, Report of Official or Employee, for each prospective board member, credit and supervisory committee member, and employee. The NCUA 4012s should be submitted to NCUA as early as possible to enable the necessary credit reports and background checks to be obtained well in advance of the anticipated charter date. NCUA will pay the direct costs of acquiring such credit and background checks.

Subsequent organizational meetings may be held to discuss the progress of the charter investigation, to announce the proposed slate of officials, and to respond to any questions posed at the meeting.

If NCUA approves the charter application, the subscribers, as their final duty, will elect the board of directors and credit committee of the proposed federal credit union. The new board of directors will then appoint the supervisory committee.

VII.B—Support for Charter Application

VII.B.1—General

As discussed previously in this chapter, applicants for federal credit union charters must, at a minimum, provide evidence that:

- the group constitutes a recognized common bond;
- the subscribers, prospective officials and employees are of good character; and
- the establishment of the credit union is economically feasible.

In addition, the Federal Credit Union Act requires applicants to submit a sworn organization certificate setting forth seven criteria (see section entitled "Subscribers" earlier in this chapter). In order to process the application and capture all required information, NCUA has developed certain chartering forms to assist organizers. See Appendix D for the necessary blank forms.

VII.B.2—Federal Credit Union Investigation Report, NCUA 4001

Applications for new federal credit unions will be submitted on NCUA

4001. (State-chartered credit unions applying for conversion to federal charter will use NCUA 4000. See chapter 3 for a full discussion.) The organizer is required to certify the information and recommend approval or disapproval, based on the investigation of the request. Instructions and guidance for completing the form are provided on the form's reverse. Associational charter applicants must include a statement of their membership criteria (normally the group's charter or bylaws) and current financial statements on the associational sponsor.

VII.B.3—Report of Official and Employee, NCUA 4012

This form documents general background information of each official and employee of the proposed federal credit union. Each official must complete and sign this form. The organizers must review each of the NCUA 4012s for elements—criminal convictions, indictments, etc.—that would prevent the prospective official or employee from serving in an official capacity. Further, such factors as past due credit obligations and bankruptcies disclosed during credit checks may disqualify an individual.

VII.B.4—Organization Certificate, NCUA 4008

This document establishes the seven criteria required of subscribers by the Federal Credit Union Act and is signed by the subscribers and notarized. This document should be executed in duplicate. During his or her on-site contact, the NCUA staff member assigned to the case will assist in the proper completion of this document.

VII.B.5—Certification of Resolutions, NCUA 9501

This document certifies that the board of directors of the proposed federal credit union has resolved to apply for insurance of member accounts and has authorized the chief executive officer and chief financial officer to execute the Application and Agreements for Insurance of Accounts. This form must be signed by both the chief executive officer and recording officer of the proposed federal credit union.

VII.B.6—Application and Agreements for Insurance of Accounts, NCUA 9500

This document contains the agreements with which federal credit unions must comply in order to obtain National Credit Union Share Insurance Fund (NCUSIF) coverage of member accounts. The document must be completed and signed by both the chief executive officer and chief financial officer. Each prospective federal credit union must qualify for federal share insurance.

VIII—NCUA Review

VIII.A—General

As discussed previously, NCUA may provide tentative approval of the proposed federal credit union's field of membership. Additionally, credit and background investigations may be conducted concurrently by NCUA with other work being performed by the organizers and subscribers to reduce the likelihood of delays in the chartering process.

Once NCUA receives a complete charter application package, an acknowledgment of receipt will be sent to the organizers within 10 business days of receipt, and a staff member will be assigned to perform an on-site contact with the proposed officials and others having an interest in the proposed federal credit union. NCUA will make every effort to process the application expeditiously.

The staff member will review the application package and verify its accuracy and reasonableness. The staff member will inquire into the financial management experience, suitability and commitment of the proposed officials and make an assessment of economic advisability. The staff member will also assist the subscribers in the proper completion of the Organization Certificate, NCUA 4008. By assisting in the completion of the Organization Certificate, the staff member may, without indicating his or her endorsement of the charter application, expedite the process.

The staff member will thoroughly analyze the prospective credit union's business plan for realistic projections, attainable goals, and time commitment. Any concerns will be reviewed with the organizers and discussed with the prospective credit union's officials.

The staff member will then make a recommendation to the regional director regarding the charter application. His or her recommendation may include specific provisions to be included in a Letter of Understanding and Agreement. In most cases, NCUA will require the prospective federal credit union's officials to enter into an agreement not to engage in certain activities. The agreement is for a limited term—usually two to four years. A sample Letter of Understanding and Agreement is attached in Appendix B.

VIII.B—Regional Director Approval

Once approved, the board of directors of the newly formed federal credit union will receive a signed charter and bylaws from the regional director. Additionally, the officials will be advised of the name and mailing address of the examiner who has been assigned responsibility for supervising and examining the credit union.

Generally, the examiner will contact the credit union officials shortly after approval of the charter in order to arrange for the initial examination (usually within the first six months of operation). Assistance in commencing operations is generally available through the various trade organizations listed in Appendix F.

VIII.C—Regional Director Disapproval

Where a regional director disapproves any application, in whole or in part, under this Chapter, the organizers will be informed in writing of the specific reasons for the action. Where applicable, the regional director will provide information concerning options or suggestions that they could consider for gaining approval or otherwise acquiring credit union service.

The letter of denial will include the procedure for and other information on the group's right to appeal the decision.

VIII.D—Appeal of Regional Director Decision

The procedures for filing an appeal of any actions taken by NCUA regional directors will be followed. If not included with the denial notice, a copy of these procedures may be obtained from the regional director who made the decision.

The prospective group may submit substantive new and additional information to the regional director for reconsideration. In these cases, the request will not be considered as an appeal but as a request for reconsideration by the regional director. If the request is again denied, the group may proceed with the appeal process.

IX—Future Supervision

Once NCUA has granted a charter to a new federal credit union, an examiner will be assigned to supervise the credit union.

The examiner will be responsible for monitoring the progress of the credit union and ensuring it gets off to a good start. The examiner will also monitor compliance with the terms of the Letter of Understanding and Agreement. Typically, the examiner will require copies of monthly board minutes and financial statements.

Each federal credit union is examined regularly by NCUA to determine that it remains in compliance with law and regulation and to determine that it does

not pose undue risk to the National Credit Union Share Insurance Fund.

The Federal Credit Union Act requires all newly chartered credit unions, up to two years after the charter anniversary date, to obtain NCUA approval prior to appointment of any board member, any credit or supervisory committee member, or any senior executive officer. Part 701.14 of the NCUA Regulations sets forth the notice and application requirements. If NCUA issues a Notice of Disapproval, the newly chartered credit union is prohibited from making the change. NCUA may disapprove an individual serving as a director, committee member or senior executive officer if it finds that the competence, experience, character, or integrity of the individual would not be in the best interests of the members of the credit union or of the public to permit the individual to be employed by or associated with the credit union.

CHAPTER 2—AMENDMENTS TO THE FIELD OF MEMBERSHIP

I—Introduction

As stated in Chapter 1, Section 5 of every federal credit union's charter defines the groups the credit union is legally entitled to serve. There are a number of instances in which Section 5 may need to be changed. On each of these occasions, the federal credit union must obtain approval from NCUA before amending its charter.

First, a group not included in a federal credit union's charter may wish to be served by that credit union. This may occur through agreement between the group and the credit union directly, or through a merger, purchase and assumption (P&A), or spin-off. Second, a federal credit union may wish to change it common bond entirely—from an occupational to a community credit union, for example, or vice versa. Third, which is discussed in Chapter 3, a state-chartered credit union may wish to convert to a federal charter. (The field of membership of a federal credit union converting to a state charter is determined under applicable state law, except to the extent that the credit union seeks to continue to be federally insured and the proposed new field of membership would adversely affect the safe and sound operation of the institution.) Finally, a federal credit union may wish to remove a group from its field of membership—for example, through agreement with the group or a spin-off.

NCUA's goals with respect to amendments of federal credit union charters are the same as for including groups in the charters of new federal credit unions. The Agency's analysis, therefore, is also similar, though adapted for the different circumstances in which the issue arises—primarily the facts that the federal credit union is in existence and has a history of service that can be evaluated.

The three issues NCUA must evaluate in deciding whether to approve a change in a federal credit union's field of membership are:

- whether the change satisfies NCUA's common bond requirements;
- whether the interests of the groups to be added are demonstrated; and
- whether the change is economically advisable.

II—Additions Through Direct Agreement With a Group

The most common type of addition to a federal credit union's field of membership is through agreement with the group itself. The requirements are similar to those for including a group in a federal credit union's charter initially.

II.A—Common Bond Requirement

II.A.1—Additions to Fields of Membership of Occupational, Associational, and Multiple Occupational/Associational Federal Credit Unions

As with new multiple occupational/associational federal credit unions, occupational and associational groups may be added to occupational, associational, and multiple occupational/associational federal credit unions in two ways. If the group is part of an occupational or associational common bond which constitutes a majority of the federal credit union's field of membership, the group may be added regardless of location. These are commonly called "common bond additions." For any other occupational or associational common bond, the group must be within the credit union's operational area. These are commonly called "select group additions."

The requirements for common bond additions are identical to those for inclusion of occupational and associational common bonds in a credit union's initial field of membership; please refer to Section II.A and II.B of Chapter 1 for guidance. The requirements for select groups additions are similar to those set forth in Section II.D of Chapter 1 for inclusion of other associational and occupational groups in a multiple group federal credit union's field of membership initially, with this exception: The credit union may add groups within the operational areas of one of its planned service facilities if:

- The planned facility begins operation shortly after the group is added; and
- The current field of membership constitutes a significant portion of the total field of membership to be served initially by the proposed facility. Although the addition of a new select group alone is not enough to justify a planned service facility, it is permissible to include new groups as partial justification for such a facility.

Moreover, in the case of a planned facility, NCUA may, in its discretion, require financial projections and/or a business plan supporting amendments around that service facility in order to determine the economic feasibility and to address any safety and soundness concerns of the amendment.

II.A.2—Additions to the Common Bond of a Community Federal Credit Union

Community federal credit unions, except those designated low-income or distressed, may expand their fields of membership only by redefining their boundaries. There must be interaction among persons who live or work within the proposed well-defined neighborhood, community or rural district. The burden of proof for existence of the common bond is placed upon the applicant credit union.

In the majority of cases where community credit unions are asking to expand their areas of service, and in all cases where a conversion to a community charter is proposed, an NCUA staff member will make a documented on-site evaluation of the proposal. The staff member will prepare a separate analysis of the proposed amendment, independent of the credit union's application. Following completion of the on-site evaluation and regional office review of the staff member's report, the regional director will act on the proposal. Certain expansions require NCUA Board consideration.

II.A.3—Special Situations

II.A.3.a—General

The special rules for credit unions serving low-income persons, serving retirees and senior citizens over 50 years old, and serving employees at industrial parks, shopping centers and similar facilities apply equally to field of membership additions. However, there are two special situations unique to existing federal credit unions: (1) corporate restructurings and (2) plant or base closings, and other kinds of distress to a substantial portion of a credit union's membership.

II.A.3.b—Corporate Restructuring

If an occupational or associational group within a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This is an event which requires a change to the credit union's field of membership if the credit union is to continue to provide service. NCUA will permit a credit union to add to its field of membership a sold or spun off group to which it has been providing service, without regard to location, if the group requests continued service, documented by a letter from an official representative, on the group's letterhead where possible.

II.A.3.c—Distress Situations

If a major group within the field of membership of any federal credit union—whether occupational, associational, community or multiple group—suffers a severe economic reversal—e.g., a plant or base closing—one option for the credit union may be to diversify its field of membership by adding groups desiring to be served. If economically advisable, NCUA may facilitate the credit union's diversification efforts, to the extent and only until the credit union's viability is assured, by allowing the credit union to add occupational and associational groups without regard to location. To obtain this authorization, the credit union must submit a request for designation as a distressed credit union to its regional director.

The decision will be based on the totality of the circumstances, including the severity of the economic problem, whether offsetting gains from the expansion of other groups currently in its field of membership are reasonably foreseeable, the availability of other groups able to be served, the likely cost the credit union will incur in reorienting itself to serve those groups, the competitive environment it is operating in, the effect on other credit unions, and the availability of alternatives such as merger. Prior to making a determination on this issue, NCUA may request such additional information, including a business plan, as may be appropriate.

II.B—Interests of the Group to be Added

Of primary concern to NCUA is that quality credit union service be provided to all groups served by a federal credit union. Therefore, with respect to each field of membership addition, NCUA requires documentation from each group to be added stating that it desires service from the applying credit union.

II.C—Economic Advisability

Prior to granting a field of membership addition, NCUA will examine the amendment's likely effect on the credit union's operations and financial condition and its likely effect on other credit unions. Most of the information needed for analyzing the effect of adding a particular group will already be available to NCUA through the examination and call reports; generally, nothing more will be needed. However, in particular cases, a regional director may ask for additional information prior to making a decision. With respect to a proposed addition's effect on other credit unions, the requirements on overlapping fields of membership set forth in Section IV.A.2 of Chapter 1 apply here as well.

II.D—Documentation Required

The documentation needed for community charter additions will vary substantially depending on the circumstances, and has been described in general terms above. For common bond and select group additions, which constitute the bulk of amendment requests, the procedures are more standardized. A federal credit union requesting such a change must submit a formal written request, using the Application for Field of Membership Amendment form shown in Appendix D, or its equivalent, to the appropriate NCUA regional director. The request must be signed by an authorized credit union representative.

The Application for Field of Membership Amendment form must be accompanied by the following:

- A letter signed by an official representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery—regional directors may, at their discretion, however, accept such other documentation or certification as they deem appropriate. This letter must indicate:
- that the group wants to be added to the applicant federal credit union's field of membership;
- whether the group presently has any credit union service available;
- the number of persons currently included within the group to be added and their locations; and
- in the case of a select group addition, the group's proximity to one of the credit union's service facilities to which the group has access.
- If the group is eligible for membership in any other credit union, documentation must be provided to support inclusion of the group under the standards set forth in Section IV.B of Chapter 1.
- If the group to be included is an associational group, the credit union must, where required as established in Chapter 1, also provide a copy of the group's charter and bylaws defining the group's purpose, membership classes, and geographical area.

III—Additions Through Consolidation With Another Credit Union

NCUA supports credit unions desiring to remain a separate entity. However, there are three other ways a federal credit union can expand its field of membership, two of which result in a credit union's ceasing to exist—by taking in the field of membership of another credit union through a merger or a purchase and assumption (P&A), or by taking a portion of a continuing credit union's field of membership through a spin-off. Spin-offs are discussed in Section VI of this Chapter.

III.A—Mergers

Generally, the standards applicable to field of membership amendments apply to mergers where the continuing credit union is a federal charter. In particular, where the merging credit union is state chartered, the field of membership rules applicable to a credit union converting to a federal charter apply. However, there are some differences:

- As to a merger involving a common bond addition, the requirements to provide a request for credit union service from the corporate, associational, or other unit to be added is not required, since the unit already has credit union service.
- As to a merger involving a select group addition:
- For the same reason, the requirement for a letter from each group included in the credit union's field of membership is not required.
- Where a state credit union is merging into a federal credit union, the operational area requirement may be waived on a proper showing that the state credit union will continue to be able to provide quality credit union service to its current field of membership as a federal credit union. Upon merging, the state credit union's field of membership will be worded to conform to the NCUA standards set forth in Chapter 1. Any subsequent field of membership amendments must comply with applicable amendment procedures.
- As to a merger of a community credit union into a federal credit union of any type, the continuing credit union may be permitted to continue to provide service to the merging credit union's members of record as of the merger date where the operational area requirement

is satisfied. Except in the case of an emergency merger, the continuing federal credit union can obtain only the members of record of the merging community credit union.

Where both credit unions are community charters, the continuing credit union is a federal credit, and the criteria for expanding the service area of a community federal credit union (as discussed previously in this Chapter) are satisfied, the entire field of membership of the merging credit union may be added to the continuing federal credit union's charter.

Mergers must be approved by all affected NCUA regional directors, and, as applicable, the state regulators.

III.B—Emergency Mergers

A specifically designated emergency merger may be approved by NCUA without regard to field of membership or other legal constraints. An emergency merger involved NCUA's direct intervention. The credit union to be merged must either be insolvent or will likely become insolvent within 12 months and NCUA must determine that:

- an emergency requiring expeditious action exists
- other alternatives are not reasonably available
- the public interest would best be served by approving the merger

In an emergency merger situation, NCUA takes an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any field of membership restrictions and without changing the character of the continuing federal credit union for future amendments. Under this authority, therefore, a federal credit union may take into its field of membership a group defined by a community or associational common bond permitted under state law, regardless of whether that common bond definition could be approved under the Federal Credit Union Act.

III.C—Purchase and Assumptions (P&A's)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a purchase and assumption (P&A).

A P&A has limited application because the failing credit union must be placed into involuntary liquidation. However, in the few instances where a P&A may occur, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership along with specified loans, shares and certain other designated assets and liabilities, without regard to field of membership amendment restrictions and without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

P&A's involving federally insured state credit unions in different NCUA regions must be approved by all affected regional directors and, as applicable, the state regulators.

IV—Field of Membership Conversions

A community federal credit union may convert to an occupational, associational, or multiple group credit union, and an occupational, associational, or multiple group credit union may convert to a community credit union. In any case, a change to the credit union's field membership will be necessary.

IV.A—Conversion to Occupational, Associational, or Multiple Group Federal Credit Union

A community federal credit union converting to an occupational, associational, or multiple group field of membership must meet the common bond and economic advisability requirements applicable to the type of charter which it seeks conversion to.

IV.B—Conversion to Community Charter

An existing occupational, associational or multiple group federal credit union may apply to convert to a community charter. In most cases, groups currently in the credit union's field of membership but outside the new community credit union's boundaries may be included in the new community charter.

In order to support a case for a conversion to community charter, the applicant federal credit union must develop a detailed business plan incorporating the following data:

- Current financial statements, including the income statement and a summary of loan delinquency.
- A map or maps showing both the existing and proposed boundaries for the field of membership.
- A written description of the area of community service for the proposed community credit union.
- The most current population figures for the existing and proposed boundaries.
- The source of the population information; census data are considered the most authoritative; the greater the population of the proposed area, the greater justification necessary to support the existence of the "community" and interaction among its residents.
- Evidence in the form of surveys or letters from official representatives of prominent groups located in the area to be added showing that the persons who live, work, or worship in the area are interested in affiliating with the applicant credit union.
- Evidence that the proposed area is a "community" as defined in "Community Common Bond" in Chapter 1.
- Information concerning the availability of financial services to the residents of the new area.
- A list of credit unions with a home or branch office in the proposed area. (If present credit union service to the residents of the new area is adequate, there may be no basis for the proposed conversion.)
- The attitude of current credit union sponsors and existing credit union members toward the proposed conversion.
- The anticipated financial impact on the credit union in terms of need for additional employees and fixed assets.

V—Removal of Groups From the Field of Membership

Credit unions may request removal of a group from its field of membership for various reasons.

The most common reasons for this type amendment are:

- The group is within the overlapping field of membership of two credit unions and one wishes to discontinue service.
- The federal credit union cannot continue to provide adequate service to the group.
- The group has ceased to exist.
- The group does not respond to repeated requests to contact the credit union or refuses to provide needed support.
- The group initiates action to be removed from the field of membership.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union wishes to remove the group and whether the existing members of the group will continue membership. Membership may continue for those who are already members if the credit union has adopted the "once a member, always a member" bylaw provision.

VI—Spin-Offs

A "spin-off" occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares and capital of a credit union, are transferred to a new or existing credit union. A spin-off is unique in that one credit union has a field of membership addition and the other has a removal.

If the spin-off goes to a new federal charter, the requirements of Chapter 1 apply. (See that chapter for discussion of the field of membership and documentation requirements for new federal charters.) If it goes to an existing federal charter, the requirements of Chapter 2 apply.

Spin-offs involving federally insured state credit unions in different NCUA regions must be approved by all affected regional directors and the state regulators, as applicable.

The request for approval of a spin-off must be supported with a plan that addresses, as a minimum:

- Why the spin-off is being requested.
- What part of the field of membership is to be spun-off.
- Whether the affected credit unions have a common sponsor or are located within the same operational area.
- Which assets, liabilities, shares and capital are to be transferred.
- The financial impact the spin-off will have on the affected credit unions.
- The ability of the acquiring credit union to effectively serve the new members.
- The proposed spin-off date.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers—see Part 708 of the NCUA Regulations—except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. Voting requirements for federally insured state credit unions are governed by state statute.

VII—Professional Conflicts

It is important for a credit union, as well as professional organizations such as accounting firms, law firms, real estate title insurance firms and appraisal firms, to avoid the appearance of impropriety when the credit union contracts with a professional organization for services. This is even more critical if the professional organization and/or its employees are members of the credit union.

When a professional organization is added to a federal credit union's field of membership, the credit union should notify the professional organization of certain provisions. The following notice is intended to ensure that decisions made by a credit union and the professional organizations serving the credit union are independent of any loan decisions or deposit activities:

"Please be advised that with respect to the addition of the employees of [professional organization] to the [FCU], any lending, deposit and/or other credit union services involving this group's members must avoid any appearance of impropriety and must follow the ethical standards of the profession."

VIII—Procedures for Amending the Field of Membership

VIII.A—General

All requests for approval to amend a federal charter must be submitted to the appropriate regional director. In normal cases, the regional director will make a decision on the request within 10 business days. If a decision cannot be made within that time, the regional director will notify the credit union within the 10-business-day period.

To streamline the process further, NCUA has instituted two additional procedures—a limited preapproval process and a procedure for easing the workload when making substantial charter changes as with mergers and charter conversions.

VIII.B—Streamlined Expansion Procedure (SEP) for Small Occupational Groups

In keeping with the goals of NCUA chartering policy to provide service to all eligible groups desiring credit union service, well operated federal credit unions except those designated as "distressed" may take advantage of the SEP for adding occupational groups to their fields of membership.

To use this procedure, the federal credit union's board of directors must first apply to their respective NCUA regional director for a charter amendment. The charter amendment request must be signed by the presiding officer of the board of directors.

The following is a sample amendment for permitting a federal credit union to use the SEP authority:

Groups of persons with occupational common bonds which are located within 25 miles of one of the credit union's service facilities, which have provided a written request for service to the credit union, which do not presently have credit union service available, and which have no more members in the group than the maximum number established by the NCUA Board for additions under this provision: Provided, however, that the National Credit Union Administration may permanently or temporarily revoke the power to add groups under this provision upon a finding, in the Agency's discretion, that permitting additions under this provision are not in the best interests of the credit union, its members, or the National Credit Union Share Insurance Fund.

Once NCUA has approved the amendment and the credit union board has adopted it, the SEP authority may be implemented. The charter amendment permits approved federal credit unions to immediately begin serving employee groups meeting criteria set forth in this section. Under this procedure, there is no formal NCUA action necessary on each group being added.

The maximum number of persons for each group of employees which may be added under SEP will be established by the NCUA Board from time to time. The number will be based on potential primary members—that is, the persons sharing the basic occupational affinity to each sponsor group; family members and other derivative members are not included in the SEP limit. Several groups may be simultaneously added using these procedures; however, the maximum number of persons for each group must fall within the SEP limit.

The SEP does not apply to associational groups since NCUA must review membership requirements and geographical area prior to these groups' being added to a field of membership. The procedure also does not apply to community charter expansions because of the more individualized analysis required.

The following SEP steps and documentation requirements must be adhered to:

- The federal credit union must complete, for each group to be added, an Application for Field of Membership Amendment form shown in Appendix D
- The federal credit union must obtain a letter, on the group's letterhead where possible, signed by an official representative identified by title, requesting credit union service and stating that the group does not have any other credit union service available from any source
- The group must be located within 25 miles of one of the federal credit union's service facilities
- The group must indicate the number of potential members—the number of employees—seeking service

• The federal credit union must maintain the above documentation permanently with its charter

• The federal credit union must maintain a control log of groups added to its field of membership under the SEP procedure. The control log must include the date the group obtained service, the name and location of the sponsor group, the number of potential primary members added, the number of miles to the nearest main or branch office, the federal credit union board of director's approval of the group and the date approved. See Appendix D for a sample control log.

• The groups added under SEP must be reported to the federal credit union's board at the next regular board meeting and made a part of the meeting minutes

• The control log and other SEP documentation must be made available to NCUA upon request

The regional director may from time to time request service status reports on groups added under SEP. It is advisable to use some method, such as a sponsor prefix added to the member account number, to readily access data for such groups.

Should a federal credit union fail to provide quality credit union service, as determined by the group's members or employees, to a group added under SEP, NCUA may subsequently permit dual membership with another credit union.

Should a federal credit union fail to follow the above procedures or deteriorate financially or operationally, NCUA, at its discretion, may revoke the SEP privilege.

VIII.C—Block Additions

When a state credit union is converting to a federal charter or when a credit union is being merged into a federal credit union, large blocks of select groups frequently are added to a credit union's field of membership. In such cases, the federal credit union whose field of membership is being revised should consult directly with the appropriate regional office early in the process to ensure the efficient treatment of such revisions and to avoid misunderstandings.

Therefore, when a block of 50 or more new groups is being added to a credit union's field of membership at any one time, NCUA may require that a list of the groups and their locations be provided on a computer diskette. Director coordination with the appropriate NCUA regional office will ensure the compatibility of hardware and software.

VIII.D—Regional Director's Decision

Except for those field of membership amendments resulting from use of the SEP, all such amendment requests will be reviewed by regional office staff in order to ensure conformance to NCUA policy, are properly documented, and do not cause significantly harmful or unreasonable overlap with the fields of membership of existing credit unions.

NCUA understands and appreciates the importance of timely processing of well-supported amendment requests. Therefore, NCUA has established a goal of ten business days from the date of receipt in the regional office for processing of a routine, complete amendment request. A fully documented request, including the Application for Field of Membership Amendment, that fulfills all of the criteria discussed in this manual and does not require written or telephone follow-up will normally be processed within this time.

In some cases, an on-site review by NCUA staff may be required by the regional director before acting on a proposed amendment. In addition, the regional director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to submit a business plan.

The condition of the requesting credit union will be considered in every instance. The economic feasibility of expanding the field of membership of a credit union with serious financial or operational problems must be carefully considered if the safety and soundness of the credit union is to be preserved.

In most cases, field of membership amendments will only be approved for credit unions which are operating satisfactorily. If a federal credit union is having difficulty providing good service to its current membership, it may have even more difficulty serving an enlarged field of membership. In some cases, expanding the field of membership of a struggling credit union may do more harm than good. A struggling credit union's resources need to be focused on current problems. Placing an additional strain on these resources by increasing the field of membership may also increase the credit union's problems.

VIII.E—Regional Director Approval

If the requested amendment is approved by the regional director, the credit union will be furnished a formal, updated Section 5 of its charter which restates the field of membership, including the requested amendment. After action by the board of directors, the form should be promptly filed with the credit union's official charter and bylaws.

VIII.F—Regional Director Disapproval

Where a regional director disapproves any application, in whole or in part, under this chapter, the applicant will be informed in writing of the specific reasons for the action. Where applicable, the regional director will provide information concerning options or suggestions that could be considered for gaining approval.

The denial letter will include the procedure for and other information on the credit union's right to appeal the decision.

VIII.G—Appeal of Regional Director Decision

The procedures for filing an appeal of any actions taken by NCUA regional directors will be followed. If not included with the denial notice, a copy of these procedures may be obtained from the regional director who made the decision.

The prospective group may submit substantive new and additional information to the regional director for reconsideration. In these cases, the request will not be considered as an appeal but as a request for reconsideration by the regional director. If the request is again denied, the group may proceed with the appeal process.

IX—Service Status Reports

Federal credit unions which frequently add select groups to their fields of membership should be prepared to furnish a written summary of the results of their efforts to bring service to the employees or members of the select groups.

The regional directors will periodically request that such federal credit unions submit service status reports to NCUA showing, at a minimum, the number of primary potential members of each select group added and the number of persons from each select group who have actually enrolled as credit union members.

These service status reports can be enlarged to require information concerning aggregate share and loan activity by select group or participation in other credit union services.

In any event, federal credit unions using the select group amendment method should implement an information gathering system early in their amendment/diversification program to track their progress in providing service to the potential members of their select groups.

This information will help the credit union to operate more efficiently and

will give management the data necessary to make decisions about marketing strategy, new promotions, implementation of new services, etc.

The service status reports will enable NCUA to determine which federal credit unions are serving newly added groups, as well as any federal credit unions that are not serving new groups.

If the NCUA determines that a federal credit union is not adequately serving new groups, the regional director may restrict further amendments and permit the groups not being adequately served to be overlapped with another federal credit union or remove the select group(s) not being served from Section 5 of the credit union charter.

CHAPTER 3—CHARTER CONVERSIONS

I—Introduction

A charter conversion is a change in the jurisdictional authority under which a credit union operates. A credit union's charter is the instrument granted to the institution by the state or federal government.

Federal credit unions receive their charters from NCUA and are subject to its supervision, examination, and regulation; they are incorporated under federal law.

State-chartered credit unions are incorporated in a particular state, receiving their charter from the state agency responsible for credit unions and subject to the state's regulator. If the state-chartered credit union's deposits are federally insured it will also fall under NCUA's jurisdiction.

A federal credit union's power and authority are derived from the Federal Credit Union Act and NCUA Rules and Regulations. State-chartered credit unions are governed by state law and regulation.

There are two types of charter conversions—federal charter to state charter, and state charter to federal charter. Although common bond is not an issue from NCUA's standpoint in the case of a federal to state charter conversion, the procedures and forms relevant to such a conversion have been included.

II—Conversion of a State Credit Union to a Federal Credit Union

II.A—General Requirements

Any state-chartered credit union may apply to convert to a federal credit union. In order to do so, it must:

- Comply with state law regarding conversion;
- File proof of compliance with NCUA;
- File the required conversion application, proposed federal credit union organization certificate and other documents with NCUA;
- Comply with the requirements of the Federal Credit Union Act, e.g., common bond and reserve requirements; and
- be granted a charter by NCUA.

Conversions are treated the same as any initial application for a federal charter, including mandatory on-site examination by NCUA. NCUA will also consult with the appropriate state authority regarding the credit union's current condition, management expertise, and past performance. Since the applicant in a conversion is an ongoing credit union, the economic advisability of granting a charter is more readily determinable than in the case of an initial charter application.

Generally, a converting state credit union's field of membership must conform to NCUA chartering policy. However, if a converting credit union can demonstrate that it has been effectively serving groups outside what would have been its operational area if it had been a federal credit union, the regional director, in his or her discretion, may permit continued service to these groups after conversion. Every reasonable effort will be made to phrase the field of membership similar to the presentations in Chapters 1 and 2 with individually listed groups and their locations. In any case, subsequent changes must conform to NCUA amendment policy in effect at that time.

II.B.—Submission of Conversion Proposal to NCUA

The following actions are to be taken before submitting a conversion proposal:

- The credit union board must approve a proposal for conversion.
- The Application to Convert (NCUA 4401) must be completed. Its purpose is to provide the regional director with information on the present operating policies and financial condition of the credit union and the reasons why the conversion is desired. A continuation sheet may be used if space on the form is inadequate. Particular attention should be given to answering the question on the reasons for conversion. These reasons should be stated in specific terms, not as generalities.
- The application must be accompanied by all required attachments including the following:
- Written evidence that the state regulator is either in agreement with the conversion proposal or, if not in agreement, the reasons therefor.
- The Application for Insurance of Accounts (NCUA 9600) in the case of a state credit union that is not federally insured.
- The Application and Agreements for Insurance of Accounts (NCUA 9500).
- The Federal Credit Union Investigation Report, Conversion of State Charter to Federal Charter (NCUA 4000).
- The most current financial report and delinquent loan schedule.
- The Organization Certificate (NCUA 4008). Only Part (3) and the signature/notary section of page 4 should be completed and, where applicable signed by the credit union officials. The NCUA regional office will complete the other sections of this document.

II.C—NCUA Consideration of Application to Convert

II.C.1—Review by the Regional Director

The application will be reviewed to determine that it is complete and that the proposal is in compliance with Section 125 of the Federal Credit Union Act. This review will include a determination that the state credit union's field of membership is in compliance with NCUA's chartering policies. The regional director may make further investigation into the proposal and may require the submission of additional information to support the request to convert. At this point, NCUA will conduct an on-site review of the credit union.

II.C.2—On-Site Review

NCUA will examine the books and records of the credit union on-site. Non-federally insured credit unions will be assessed an insurance application fee.

II.C.3—Approval by the Regional Director and Conditions to the Approval

The conversion will be approved by the regional director if it is in compliance with Section 125 of the Federal Credit Union Act and meets the criteria for federal insurance. Where applicable, the regional director will specify any special conditions that the credit union must meet in order to convert a federal charter, including changes to the credit union's field of membership in order to conform to NCUA's chartering policies. Some of these conditions may be set forth in a Letter of Understanding and Agreement ("LUA"), which requires the signature of the officials and the regional director.

II.C.4—Notification

The regional director will notify both the credit union and the state regulator of the decision on the conversion.

II.D—Action by Board of Directors

II.D.1—General

Upon being informed of the regional director's approval, the board must:

- Comply with all requirements of the state regulator that will enable the credit union to convert to a federal charter and cease being a state credit union;
- Obtain a letter or official statement from the state regulator certifying that the credit union has met all of the state requirements and will cease to be a state credit union upon its receiving a federal charter. A copy of this document must be submitted to the regional director;
- Obtain a letter from the share insurer, if applicable, certifying that the credit union has met all withdrawal requirements. A copy of this document must be submitted to the regional director.
- Submit a statement of the action taken to comply with any conditions imposed by the regional director in the approval of the conversion proposal and, if applicable, submit the signed LUA.

II.D.2—Application for a Federal Charter

When the regional director has received evidence that the board has completed the actions described above, the federal charter and new Certificate of Insurance will be issued.

The credit union may then complete the conversion as discussed in the following section. Denials are appealable. (See Chapter 1, section VIII.D.)

II.E—Completion of the Conversion

II.E.1—Effective Date of Conversion

The date on which the regional director approves the Organization Certificate and the Application and Agreements for Insurance of Accounts is the date on which the credit union becomes a federal credit union. The regional director will notify the credit union and the state regulator of the date of the conversion.

II.E.2—Assumption of Assets and Liabilities

As of the effective date, the federal credit union will be the owner of all of the assets and will be responsible for all of the liabilities and share accounts of the state credit union.

II.E.3—Board of Directors' Meeting

Upon receipt of its federal charter, the board will hold its first meeting as a federal credit union. At this meeting, the board will transact such business as is necessary to complete the conversion as approved and to operate the credit union in accordance with the requirements of the Federal Credit Union Act and NCUA Rules and Regulations. Actions to be taken at this meeting include:

- Change of the credit union's name on all records, accounts, investments and other documents evidencing assets or liabilities of the credit union;
- Changes to the credit union's books and records:
- As of the commencement of business, the accounting system, records, and forms must conform to the standard established by NCUA;
- New journal and cash record and general ledger records should be set up. The general ledger accounts for the state credit union will be posted through the effective date of the conversion, and the new balances will be transferred to the new general ledger accounts of the federal credit union;
- The income and expense accounts of the state credit union will not be closed unless the conversion is at the close of an accounting period or is required by the state regulator; and
- The individual share and loan ledger accounts used by the state credit union may continue to be used.

The federal credit union's name will be properly reflected on these accounts.

II.E.4—Reports to NCUA

Within 10 business days after commencement of operations, the recently converted federal credit union must submit to the regional director the following:

- Report of Officials (NCUA 4501).
- Financial and Statistical Reports, (Forms FCU 109A, 109B, and 109F, or their equivalent) as of the commencement of business of the federal credit union.

III—Conversion of a Federal Credit Union to a State Credit Union

III.A—General Requirements

Any federal credit union may apply to convert to a state credit union. In order to do so, it must:

- Notify NCUA prior to commencing the process to convert to a state charter and state the reason(s) for the conversion;
- Comply with the requirements of Section 125 of the Federal Credit Union Act that enable it to convert to a state credit union and to cease being a federal credit union; and
- Comply with applicable state law and the requirements of the state regulator.

Particular attention should be given to answering the question on the reasons for conversion. These reasons should be stated in specific terms, not as generalities.

III.B—Special Provisions Regarding Federal Share Insurance

If the federal credit union wants to continue federal share insurance after the conversion to a state credit union, it must submit an Application for Insurance of Accounts (NCUA 9600) to the regional director at the time it requests approval of the conversion proposal. The regional director has the authority to approve or disapprove the Application.

If the converting federal credit union does not want to continue federal share insurance or if its application for continued insurance is denied, insurance will cease in accordance with the provisions of Section 206 of the Federal Credit Union Act.

If, upon its conversion to a state credit union, the federal credit union will be terminating its federal share insurance or converting from federal to non federal share insurance, it must comply with the membership notice and voting procedures set forth in Section 206 of the Federal Credit Union Act and Part 708 of NCUA's Rules and Regulations.

Where the state credit union will be non federally insured, federal insurance ceases on the effective date of the charter conversion. If it will be otherwise uninsured, then federal insurance will cease one year after the date of conversion subject to the restrictions in Section 206(d)(1) of the Federal Credit Union Act. In either case, the state credit union will be entitled to a refund of the federal credit union's NCUSIF capitalization deposit and any unused portion of the federal insurance premium after the final date on which any of its shares are federally insured.

The NCUA Board reserves the right to delay the refund of the capitalization deposit for up to one year if it determines that payment would jeopardize the NCUSIF.

III.C—Submission of Conversion Proposal to NCUA

Upon approval of a proposition for conversion by a majority vote of the board of directors at a meeting held in accordance with the federal credit union's bylaws, the conversion proposal will be submitted to the regional director and will include:

- A current financial report;
- A current delinquent loan schedule;
- An explanation and appropriate documents relative to any changes in insurance of member accounts;
- A resolution of the board of directors;

• A proposed Notice of Special Meeting of the Members (NCUA 4221);
• A copy of the ballot to be sent to members (NCUA 4506);
• Evidence that the state regulator is in agreement with the conversion proposal; and
• A statement of reasons supporting the request to convert.

III.D—Approval of Proposal to Convert

III.D.1—Review by the Regional Director

The proposal will be reviewed to determine that it is complete and is in compliance with Section 125 of the Federal Credit Union Act. The regional director may make further investigations into the proposal and require the submission of additional information to support the request.

III.D.2—Conditions to the Approval

The regional director will specify any special conditions that the credit union must meet in order to proceed with the conversion.

III.D.3—Approval by the Regional Director

The proposal will be approved by the regional director if it is in compliance with Section 125 and, in the case where the state credit union will no longer be federally insured, the notice and voting requirements of Section 206 of the Federal Credit Union Act.

III.D.4—Notification

The regional director will notify both the credit union and the state regulator of the decision on the proposal.

III.E—Approval of Proposal by Members

Upon approval of the proposal by the regional director, the following actions will be taken by the board of directors:
• The proposal must be submitted to the members for approval and a date set for a vote on the proposal. The proposal may be acted on at the annual meeting, at a special meeting for that purpose, or by written ballot to be filed by the date set for the vote.
• Members must be given advance notice (NCUA 4221) of the meeting at which the proposal is to be submitted in accordance with the provisions of the Federal Credit Union Bylaws (Article V). The notice shall:
• Specify the purpose, time and place of the meeting;
• Include a brief and accurate statement of the reasons for and against the proposed conversion, including any effects it could have upon share holdings, insurance of member accounts, and the policies and practices of the credit union;
• Inform the members that they have the right to vote on the proposal at the meeting, or by written ballot to be filed not later than the date and time announced for the annual meeting, or at the special meeting called for that purpose;
• Be accompanied by a Ballot for Conversion Proposal (NCUA 4506); and
• State in bold face type that the issue will be decided by a majority of members who vote.
• A copy of the notice of the meeting shall be delivered to the regional director at the same time that it is delivered to the members.
• The proposed conversion must be approved by a majority of all of the members who vote on the proposal, a quorum being present, in order for the credit union to proceed further with the proposition. Ballots cast by members who did not attend the meeting but who submitted their ballots in accordance with instructions above will be counted with votes cast at the meeting. In order to have a suitable record of the vote, the voting at the meeting should be by written ballot as well.
• The board of directors shall, within 10 days, certify the results of the membership vote to the regional director. The statement shall be verified by affidavits of the Chief Executive Officer and the Recording Officer on NCUA 4505.

III.F—Compliance With State Laws

If the proposition for conversion is approved by a majority of all members who voted, the board of directors should then:
• Ensure that all requirements of state law and the state regulator have been accommodated;
• Ensure that the state charter or the license has been received within 90 days from the date the members approved the proposal to convert;
• Ensure that the regional director is kept informed as to progress toward conversion and of any material delay or of substantial difficulties which may be encountered.

If the conversion cannot be completed within the 90-day period, the regional director should be informed of the reasons for the delay.

III.G—Completion of Conversion

In order for the conversion to be completed, the following steps are necessary:
• The board of directors will submit a copy of the state charter to the regional director within 10 days of its receipt. This will be accompanied by the federal charter and the federal insurance certificate. A copy of the financial reports (FCU 109A and 109B) as of the preceding month-end should be submitted at this time.
• The regional director will notify the credit union and the state regulator is writing of the receipt of evidence that the credit union has been authorized to operate as a state credit union.
• The credit union shall cease to be a federal credit union as of the effective date of the state charter.
• If the regional director finds a material deviation from the provisions that would invalidate any steps taken in the conversion, the credit union and the state regulator shall be promptly notified in writing. This notice may be either before or after the copy of the state charter is filed with the regional director. The notice will inform the credit union as to the nature of the adverse findings. The conversion will not be effected and completed until the improper actions and steps have been corrected.
• Upon ceasing to be a federal credit union, the credit union shall no longer be subject to any of the provisions of the Federal Credit Union Act, except as may apply if federal share insurance coverage is continued. The successor state credit union shall be immediately vested with all of the assets and shall continue to be responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place. Operation of the credit union from this point will be in accordance with the requirements of state law and the state regulator.
• If the regional director is satisfied that the conversion has been accomplished in accordance with the approved proposal, the federal charter will be canceled.
• There is no federal requirement for closing the records of the federal credit union at the time of conversion or for the manner in which the records shall be maintained thereafter. The converting credit union is advised to contact the state regulator for applicable state requirements. The credit union shall neither use the words "Federal Credit Union" in its name nor represent itself in any manner as being a federal credit union.
• If the state credit union is to be federally insured, the regional director will issue a new insurance certificate.

Appendix A—Glossary

These definitions apply only for use with this Manual. Definitions are not intended to be all inclusive or comprehensive. This Manual, the Federal Credit Union Act, and NCUA

Rules and Regulations as well as state laws may be used for further reference.

Appeal—The right of a credit union or charter applicant to request reconsideration of an unfavorable NCUA decision to a higher authority.

Associational common bond—Association resulting from membership in an organization, participation in whose activities develops common loyalties, mutual benefits and mutual interests. The association should hold regular meetings and sponsor other activities that provide for contact among members.

Associational credit union—A credit union whose field of membership consists primarily of persons who are members of one or more related associational groups.

Business plan—Plan submitted by a charter applicant or existing federal credit union addressing the economic viability of a proposed charter or field of membership addition.

Charter—The document which authorizes or combination of groups to operate as a credit union and defines the fundamental limits of its operating authority, generally including the persons the credit union is permitted to accept for membership. Charters are issued by the National Credit Union Administration for federal credit unions and by the designated state chartering authority for credit unions organized under the laws of that state.

Commond bond—The characteristic or combination of characteristics which distinguishes a particular group of persons from the general public. There are only three common bonds which can serve as a basis for a group's forming or being included in a federal credit union: employment by the same enterprise ("occupational common bond"), membership in the same association ("associational common bond"), and residence, employment, or religious affiliation in the same geographic area ("community common bond").

Community common bond—Residence or employment of persons and businesses and other legal entities located within the same well-defined neighborhood, community or rural district.

Community credit union—A credit union whose field of membership consists of persons who live or work in the same well-defined neighborhood, community, or rural district.

Conversion—The process of changing from a federal to a state or state to federal credit union charter.

Credit union—A member-owned, not-for-profit cooperative financial institution formed to permit those in the field of membership specified in the charter to save, borrow, and obtain related financial services. Federal credit unions are chartered as corporations pursuant to the Federal Credit Union Act.

Economic viability—An overall evaluation of the credit applicant's ability to operate successfully.

Emergency merger—Pursuant to Section 205(h) of the Federal Credit Union Act, authority of NCUA to merge two credit unions without regard to field of membership policy.

Exclusionary clause—A limitation, written in a credit union's charter, which precludes the credit union from serving a portion of a group otherwise included in its field of membership. Exclusionary clauses are used to prevent certain overlaps of fields of membership between credit unions.

Federal share insurance—Insurance coverage provided by the National Credit Union Share Insurance Fund and administered by the National Credit Union Administration. Coverage is provided for qualified accounts in all federal credit unions and participating state credit unions.

Field of membership—The persons (persons may include organizations and other legal entities) a credit union is permitted to accept for membership. A federal credit union's field of membership, set forth in Section 5 of its charter, may be made up entirely of a single group, related groups with one common bond, or of unrelated groups each having its own common bond.

Letter of understanding and agreement—Agreement between NCUA and federal credit union officials not to engage in certain activities and/or to establish reasonable operational goals. These are normally entered into with new charter applicants, and occasionally with credit unions granted significant charter amendments and are for a limited time.

Merger—Absorption by one credit union of all of the assets, liabilities and equity of another credit union. Mergers must be approved by the National Credit Union Administration and by the Appropriate state regulator whenever a state credit union is involved.

Multiple group credit union—A credit union whose field of membership consists of groups of persons, each group with its own common bond. The groups may be occupation, associational, or a combination thereof and do not need to share a common bond or be in any way related to one another.

Occupational common bond—Employment in the same enterprise. "Employment" includes long term contractual arrangements which are the practical equivalent of regular employment.

Occupational credit union—A credit union whose field of membership consists primarily of persons employed in the same enterprise.

Operational area—The region which, as determined by NCUA in its discretion, may reasonably be served by one of a credit union's service facilities.

Overlap—The situation which results when a group is eligible for membership in more than one credit union.

Potential membership—Persons eligible to become primary members of a federal credit union.

Primary members—Members sharing the basic occupational, associational or community affinity to the field of membership.

Purchase and assumption—Purchase of all or a part of the assets of and assumption of all or a part of the liabilities of one credit union by another credit union. The purchased and assumed credit union must first be placed into involuntary liquidation.

Select group—An occupational or associational group with its own common bond.

Secondary or derivative members—Members included in the field of membership by virtue of their close relationship to a common bond group (e.g., immediate family members, employees of the credit union, etc.).

Service facility—A facility staffed by a credit union representative which accepts share deposit and accepts loan applications or disburses loans. An ATM or similar device is not a federal credit union service facility. Similarly, a branch or service center shared by a number of credit unions is not a service facility for purposes of meeting the operational area requirements of non-common bond expansions.

Service status report—Periodic written statements made by federal credit unions to NCUA summarizing the results of efforts to bring service to the employees or members of select groups.

Subscribers—For a federal credit union, at least seven individuals who sign the charter application and pledge at least one share.

Appendix B—Letter of Understanding and Agreement

To the Board of Directors and Other Officials

_____ Federal Credit Union

Since the purposes of credit unions are to promote thrift and to make funds available for loans to credit union members for provident and productive purposes, and since newly chartered

credit unions do not generally have sufficient reserves to cover large losses on loans or meet unduly large liquidity requirements. Federal insurance coverage of member accounts under the National Credit Union Share Insurance Fund will be granted to the above named credit union subject to the conditions listed in this Letter of Understanding and Agreement and in the Organization Certificate and Application and Agreements for Insurance of Accounts. These terms are listed below and are subject to acceptance by authorized credit union officials.

1. The credit union will refrain from soliciting or accepting brokered fund deposits from any source without the prior written approval of the Regional Director.

2. The credit union will refrain from the making of large loans, that is, loans in excess of 5 percent of unimpaired capital and surplus, to any one member or group of members without the prior written approval of the Regional Director.

3. The credit union will not establish or invest in a Credit Union Service Organization (CUSO) without the prior written approval of the Regional Director.

4. The credit union will not enter into any insurance programs whereby the credit union member finances the payment of insurance premiums through loans from the credit union.

5. Any special insurance plan/program, that is, insurance other than usual and normal surety bonding or casualty or liability or loan protection and life savings insurance coverage, which the credit union officials intend to undertake, will be submitted to the Regional Director of the National Credit Union Administration for written approval prior to the officials committing the credit union thereto.

6. The credit union will prepare and mail to the district examiner financial and statistical reports as required by the Federal Credit Union Act and Bylaws by the 20th of each month following that for which the report is prepared.

7. As the credit union's officials gain experience and the credit union achieves target levels of growth and profitability, the above terms and conditions may be renegotiated by the two parties.

We, the undersigned officials of the _____ Federal Credit Union, as authorized by the board of directors, acknowledge receipt of and agree to the attached Letter of Understanding and Agreement dated _____ 19____.

This Letter of Understanding and Agreement has been voluntarily entered into with the National Credit Union Administration. We agree to comply with all terms and conditions expressed in this Letter of Understanding and Agreement.

Should the NCUA Board determine that these terms and conditions have not been complied with or that the board of directors or other officials have not conducted the affairs of the credit union in a sound and prudent manner, the NCUA Board may terminate insurance coverage of the credit union. If actions by the officials, in violation of this Letter of Understanding and Agreement, cause the credit union to become insolvent, the officials assume such personal liability as may result from their actions.

The term of this Letter of Understanding and Agreement shall be for the period of at least 24 months from the date the credit union is insured. This Letter of Understanding and Agreement may, at the option of the Regional Director, be extended for an additional 24 months at the end of the initial term of this agreement.

Dated this _____ day of _____ 19____.

NATIONAL CREDIT UNION ADMINISTRATION BOARD ON BEHALF OF THE NATIONAL CREDIT UNION SHARE INSURANCE FUND

_____

Regional Director

_____ Federal Credit Union

By:

_____

Chief Executive Officer Date

_____

Chief Financial Officer Date

_____

Secretary Date

Appendix C—NCUA Offices

CENTRAL OFFICE
1775 Duke Street
Alexandria, VA 22314–3428
Commercial: 703–518–6300

REGION I—Albany
9 Washington Square
Washington Avenue Extension
Albany, NY 12205–5512
Commercial: 518–464–4180
FAX: 518–464–4195
Connecticut
Maine
Massachusetts
New Hampshire
New York
Rhode Island
Vermont

REGION II—Capital
1775 Duke Street, Suite 4206
Alexandria, VA 22314–3437
Commercial: 703–838–0401
FAX: 703–838–0571
Delaware
District of Columbia
Maryland
New Jersey
Pennsylvania
Virginia
West Virginia

REGION III—Atlanta
7000 Central Parkway, Suite 1600
Atlanta, GA 30328–4598
Commercial: 404–396–4042
FAX: 404–698–8211
Alabama
Arkansas
Florida
Georgia
Kentucky
Louisiana
Mississippi
North Carolina
Puerto Rico
South Carolina
Tennessee
Virgin Islands

REGION IV—Chicago
4225 Naperville Road, Suite 125
Lisle, IL 60532–3658
Commercial: 708–245–1000
FAX: 708–245–1016
Illinois
Indiana
Michigan
Missouri
Ohio
Wisconsin

REGION V—Austin
4807 Spicewood Springs Road, Suite 5200
Austin, TX 78759–8490
Commercial: 512–482–4500
FAX: 512–482–4511
Arizona
Colorado
Iowa
Kansas
Minnesota
Nebraska
New Mexico
North Dakota
Oklahoma
South Dakota
Texas
Utah
Wyoming

REGION VI—Pacific
2300 Clayton Road, Suite 1350
Concord, CA 94520–2407
Commercial: 510–825–6125
FAX: 510–486–3729
Alaska
American Samoa
California
Guam
Hawaii
Idaho
Montana
Nevada
Oregon
Washington

Appendix D—NCUA Forms

NCUA4000—Conversion of State Charter to a Federal Charter—FCU Investigation Report
NCUA4001—FCU Investigation Report
NCUA9500—Application and Agreement for Insurance of Accounts
NCUA9501—Certification of Resolutions
NCUA4008—Charter

NCUA4009—Approval of Organization Certificate & Certification of Insurance
NCUA4012—Report of Official & Agreement to Serve
NCUA4401—Application To Convert from a State Credit Union to an FCU
NCUA4221—Notice of Meeting of Members
NCUA4505—Affidavit
NCUA4506—Ballot for Conversion Proposal
NCUA9600—Information to be Provided in Support of the Application of a State Credit Union for Insurance of Accounts
NCUA4015—Application for Field of Membership Amendment
NCUA4016—Streamlined Expansion Procedure (SEP) Control Log

BILLING CODE 7535-01-M

OMB No. 3133-0015
Expiration 9-30-92

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

National Credit Union Administration
Administrative Office
1776 G Street, NW
Washington, D.C. 20456

and to: Office of Management and Budget
Paperwork Reduction Project (3133-0015)
Washington, D.C. 20503

Conversion of State Charter to Federal Charter

FEDERAL CREDIT UNION INVESTIGATION REPORT
(NOTE TO ORGANIZER)

This report must be filled in completely and submitted with the other completed forms listed on page 2 under "SUBMITTAL OF CHARTER APPLICATION." Please refer to page 2 for instructions in completing this report.

A. INFORMATION FOR CHARTER AND BYLAWS

1. Proposed name _____ Federal Credit Union
   Second choice of name _____ Federal Credit Union
2. Contact Person _____ Bus. Tel. No./Area Code _____
   Res. Tel. No./Area Code _____
   Address _____
3. The credit union will maintain its office at _____
   (City) (County) (State) (Zip)
4. Permanent mailing address of credit union _____
5. Define proposed field of membership (Attach a copy of current state charter/field of membership) _____
6. The board will have (an odd number, 5 to 15) ____ members; the credit committee (an odd number, 3 to 7) ____ members; the supervisory committee (3 to 5) ____ members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

B. CHARACTER AND FITNESS OF SUBSCRIBERS

(Please type or print)

7. List of the subscribers who have signed the organization certificate (7 not more than 10 persons). Names should be IDENTICAL to signatures on the organization certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:

Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____

ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION SHOULD BE INCLUDED AS AN ATTACHMENT.

The undersigned certifies that to the best of his/her knowledge and belief the above information is true and correct.

I do (do not) recommend that a charter be granted to this group.

Signature _____, Organizer
Organizer's address _____

INSTRUCTIONS

A. INFORMATION FOR CHARTER AND BYLAWS

The subscriber should select a name for the proposed credit union, desirably a short one. Although it need not fully describe the group, the name should not be misleading. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, item 1 provides space for a second choice.

The territory of operations of a Federal credit union is described in the field of membership, item 4. The principal office of the credit union will usually be maintained at a location described in the field of membership.

The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area in which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. Any segment of a larger organization should be identified with the parent. The field of membership for each type of common bond and samples are discussed in detail in Chapter 1 of the *"Chartering and Field of Membership Manual."*

With the guidance of the organizer, the subscribers to the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

B. CHARACTER AND FITNESS OF SUBSCRIBERS

The names and addresses of the subscribers should be recorded legibly and completely in item 20 of this report. It is from this information that the Administration prepares section 3 of the charter.

The names of the subscribers must be **IDENTICAL** to their signatures on the Organization Certificate.

C. SUBMITTAL OF CHARTER APPLICATION

In addition to this Investigation Report, the following should be submitted to the appropriate regional director of NCUA:

1. Organization Certificate, NCUA 4008 - two notarized originals. At least seven, *but no more than ten persons,* must sign both copies of the organization certificate. Signatures on both copies must be identical. The person administering the oath must not be one of the subscribers. The oath on both copies of the organization certificate must be executed and show the notary's seal and date the commission expires as required by State law;
2. Report of Official and Agreement to Serve, NCUA 4012 - one original for each board member, credit committee member, and supervisory committee member;
3. Application and Agreements for Insurance of Accounts, NCUA 9500 - one original;
4. Business Plan - refer to Chapter 1 of the *Chartering and Field of Membership Manual* for a discussion of the components of an acceptable business plan.

FEDERAL CREDIT UNION INVESTIGATION REPORT

(Note to Organizer) This report form must be filled in completely and submitted with the other completed forms listed on page 8 under "Submittal of Charter Application." Please refer to page 7 for instructions in completing this report.

A. INFORMATION FOR CHARTER AND BYLAWS

1. Proposed name _____ Federal Credit Union
   Second choice _____ Federal Credit Union

2. Contact Person _____ Business Tel. _____ Residence Tel. _____
   Address _____

3. The credit union will maintain its offices at _____ (City, State, County, Zip Code)

3a. Proposed permanent mailing address of credit union _____

4. Define proposed field of membership _____

5. The board will have (an odd number, 5 to 15) _____ members; the credit committee will have (an odd number, 3 to 7) _____ members; the supervisory committee will have (3 to 5) _____ members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION

(Attach a separate sheet if space available is not adequate)

GENERAL INFORMATION

1. Potential membership _____.
   NOTE: Number of employees for occupational, active members for associational (or families for religious groups), or population per most recent census for community-type fields of membership.

2. Potential interest (survey results).
   NOTE: Sample must consist of a minimum of 250 potential members. Copy of survey form(s) utilized should be attached.
   Number of people surveyed _____.
   Number of people responding to survey _____.
   Number of people pledging an initial deposit _____.
   Total dollars pledged $ _____.
   Number pledging systematic savings _____.
   Total dollars pledged (per month) $ _____.

3. Number of persons attending the charter-organization meeting _____.

4. Are officials of the sponsor favorable toward the proposal to organize a credit union? _____.
   NOTE: Attach letters of support from company officials (occupational-type); association officials (associational-type); business, civic, or other community organizations (community-type).

For Paperwork Reduction Act Notice, see page 7.

5. What facilities and assistance, if any, will the sponsor provide?
_____ Office Space (Describe)
_____ Office Supplies
_____ Payroll deductions
_____ Funding for start-up costs, if so $_____.
_____ Other (Describe)

6. Is credit union service now available to any members of the group? _____.
If so, explain the nature and approximate extent of overlapping of such service with the field of membership proposed in this application, i.e., employees who are labor union members eligible for membership in another credit union on an associational basis; labor union members who are eligible for credit union membership on an occupational basis; community residents who are eligible for credit union membership in occupational or associational credit unions located within the proposed boundaries. _____

7. What potential difficulties do you detect in the elected officials carrying out their management responsibilities or in the FCU achieving its stated objectives? _____

NOTE TO ORGANIZER: The officials' projected goals for share growth must be recorded in the business plan.

8. What provisions have been made to overcome potential difficulties? _____

Dates of planned contacts by organizer to determine progress and to assist the group:

_____ (Date) _____ (Date) _____ (Date)

SPECIFIC INFORMATION - OCCUPATIONAL CHARTER APPLICANTS

9. How long has the sponsor company been in existence? _____.

10. What was the highest number of employees during the past three years? _____; Lowest number during the past three years _____. If a large variance, please explain, _____

11. Are there any contemplated changes in the corporate structure of the company? _____. If yes, explain _____

12. Have there been any significant changes in the corporate structure in the past three years? _____. If yes, please explain _____

13. Are there any negotiations now in progress between management and labor that could lead to work stoppages? _____. If yes, please explain _____

14. If the credit union cannot operate on the employer's property, explain how the credit union will be able to transact business effectively with the members. _____

15. If the employees to be served by the credit union work in more than one location or city, identify each location with the corresponding number of employees working at each. _____

16. Are there other employees of the company who are not being included in the proposed field of membership? _____. If so, give the number and location of the other employees and explain why a credit union is being proposed for this group only. _____

SPECIFIC INFORMATION - ASSOCIATIONAL CHARTER APPLICANTS

17. State the purpose and goals of the organization sponsoring this charter. _____

18. List the types of activities and their frequency, which the organization sponsors that provide contact among the members and from which common loyalties, mutual benefits, and mutual interests are developed. _____

19. In what year was the organization established? _____. Is it incorporated? _____. Where is the headquarters located? _____.

20. Give statistics as to trends in membership during the last five years. _____

21. What is the frequency of members' meetings? _____. Average attendance _____. Dues required _____.

22. State the geographic territory where members reside. _____

23. Except for religious and labor union groups, obtain a copy of the current bylaws, the constitution or articles of incorporation, and recent financial statements, i.e. balance sheet, and income and expense statement. Submit these documents with this application.

24. If the bylaws, constitution or articles of incorporation provides for more than one type of membership and if all classes of membership are to be included in the credit union's field of membership, provide justification for the inclusion of other than "regular" members. _____

25. For labor union group only, complete a through c:

a. State the number of labor union members at each place of employment. _____

b. State the total number of employees, whether union members or not, working at each place of employment. Give a breakdown of union versus nonunion employees. _____

c. What has been done toward organizing a credit union on an employee basis? Discuss fully. _____

SPECIFIC INFORMATION - COMMUNITY CHARTER APPLICANTS

26. List the factors or conditions which make this residential unit a logical group for credit union operation. _____

27. If the area to be served by the credit union is adjacent to any major metropolitan area, explain why it is not considered a part of such metropolitan area. _____

28. Which business, civic, or other community organizations support the proposed credit union? List and show the support pledged including the names and titles of officials who were contacted. Obtain and attach letters of support from these individuals. _____

29. Provide a map which clearly outlines the credit union's proposed community boundaries.

30. Are there currently any state or federal credit unions operating within the proposed community boundaries? _____. If so, provide a list of the credit union's names and mailing addresses.

31. List any other financial institutions, i.e. banks, savings and loan associations, etc., located within the proposed community boundaries.

C. CHARACTER AND FITNESS OF SUBSCRIBERS

1. List of subscribers who have signed the organization certificate (7 not more than 10 persons). Names should be IDENTICAL to signatures on the organization certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

2. Are all of the subscribers within the field of membership? _____. Do they appear to be fairly representative of the group described in the definition of the field of membership? _____. If not, explain _____

3. Does your investigation indicate that the subscribers are persons of good character? _____. If not, explain _____

4. From your investigation, is it your judgment that the directors and committee members are persons of good character, and that they have the ability and determination to operate a credit union satisfactorily? _____. If not, explain _____

5. Does it appear that there are any factions within the group which may render smooth and efficient credit union operations difficult? _____. If so, explain _____

6. Is there any indication that the proposed credit union would be used for selfish gain by any person or group of persons within the group to be served? _____.

7. Is an application for a State charter now pending? _____.

8. Has the group ever had a credit union? _____. If so, when did it liquidate or merge? _____.

ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION SHOULD BE INCLUDED AS AN ATTACHMENT.

The undersigned certifies that to the best of their knowledge and belief the above information is true and correct.

I do (do not) recommend that a charter be granted to this group.
Signature _____, Organizer
Organizer's Address _____
Telephone No. _____ Date _____

OMB No. 3133-0015
Expiration 9-30-92

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

National Credit Union Administration
Administrative Office
1776 G Street, NW
Washington, D.C. 20456

and to: Office of Management and Budget
Paperwork Reduction Project (3133-0015)
Washington, D.C. 20503

INSTRUCTIONS

A. INFORMATION FOR CHARTER AND BYLAWS

The subscriber should select a name for the proposed credit union, desirably a short one. Although it need not fully describe the group, the name should not be misleading. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, item 1 provides space for a second choice.

The territory of operations of a Federal credit union is described in the field of membership, item 4. The principal office of the credit union will usually be maintained at a location described in the field of membership.

The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area in which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. Any segment of a larger organization should be identified with the parent. The field of membership for each type of common bond and samples are discussed in detail in Chapter 1 of the *"Chartering and Field of Membership Manual."*

With the guidance of the organizer, the subscribers to the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION

This section of the report contains information on:

1. The size and compactness of the group;
2. The nature of the common bond;
3. The attitude of the:
   a. (if occupational based field of membership) management of the sponsor organization;
   b. (if associational based field of membership) officers of the sponsor association;
   c. (if community based field of membership) community leaders and/or officers of prominent associations or organizations in the area to be served;
4. The facilities available for credit union operations;
5. The availability of existing credit union service, and
6. Other facts to support a potential for successful operation.

This section of the report should contain information on the management, association or civic leaders contacted that intend to support or utilize the credit union. In those cases where certain persons in the area are opposed to the credit union, the organizer should point out the factors which indicate that the group will be able to overcome this handicap.

Clerical assistance at least during the first few months of operation, payroll deductions, and office space are desirable aids in the development of a credit union. Plans for overcoming any obstacles to effective operation such as lack of office space or scattered field of membership should be described briefly. If more space is needed than that provided, a separate sheet may be used.

C. CHARACTER AND FITNESS OF SUBSCRIBERS

The names and addresses of the subscribers should be recorded legibly and completely in item 20 of this report. It is from this information that the Administration prepares section 3 of the charter.

The names of the subscribers must be **IDENTICAL** to their signatures on the Organization Certificate.

D. SUBMITTAL OF CHARTER APPLICATION

In addition to this Investigation Report, the following should be submitted to the appropriate regional director of NCUA:

1. Organization Certificate, NCUA 4008 - two notarized originals. At least seven, *but no more than ten persons*, must sign both copies of the organization certificate. Signatures on both copies must be identical. The person administering the oath must not be one of the subscribers. The oath on both copies of the organization certificate must be executed and show the notary's seal and date the commission expires as required by State law;
2. Report of Official and Agreement to Serve, NCUA 4012 - one original for each board member, credit committee member, and supervisory committee member;
3. Application and Agreements for Insurance of Accounts, NCUA 9500 - one original;
4. Business Plan - refer to Chapter 1 of the *Chartering and Field of Membership Manual* for a discussion of the components of an acceptable business plan.

APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS

Date

TO: The National Credit Union Administration Board (Board)

The proposed _____ Federal Credit Union,

_____
(Mailing Address)

_____
(City) (State) (Zip Code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To pay the reasonable cost of such examinations as the Board may deem necessary in connection with determining the eligibility of the application for insurance.

2. To permit and pay the reasonable cost of such examinations as in the judgment of the Board may from time to time be necessary for the protection of the fund and of other insured credit unions.

3. To permit the Board to have access to any information or report with respect to any examination made by or for any public regulatory authority and furnish such additional information with respect thereto as the Board may require.

4. To provide protection and indemnity against burglary, defalcation, and other similar insurable losses, of the type, in the form, and in an amount at least equal to that required by the laws under which the credit union is organized and operates.

5. To maintain such regular reserves as may be required by Section 116 of the Federal Credit Union Act.

6. To maintain such special reserves as the Board, by regulation or in special cases, may require for protecting the interest of members.

7. Not to issue or have outstanding any account or security the form of which, by regulation or in special cases, has not been approved by the Board.

8. To pay and maintain the capitalization deposit required by Title II of the Federal Credit Union Act.

9. To pay the premium charges for insurance imposed by Title II of the Federal Credit Union Act.

10. To comply with the requirements of Title II of the Federal Credit Union Act and of regulations prescribed by the Board pursuant thereto.

11. To permit the Board to have access to all records and information concerning the affairs of the credit union and to furnish such information pertinent thereto that the Board may require.

12. To comply with Title 18 of the United States Code and other pertinent Federal statutes as they may exist or may be hereafter promulgated or amended.

We, the undersigned, certify to the correctness of the information submitted. In support of this application the undersigned submit the Schedules described below:

Schedule No.	Title

We, the undersigned, further certify that to the best of our knowledge and belief no proposed officer, committee member, or employee of this credit union has been convicted of any criminal offense involving dishonesty or a breach of trust, except as noted in attachments to this application. We further agree to notify the Board if any proposed or future officer commits a criminal offense.

_____ _____
Chief Executive Officer Chief Financial Officer

Note: A willfully false certification is a criminal offense. U.S. Code, Title 18. Sec. 1001.

NCUA 9500

CERTIFICATION OF RESOLUTIONS

_____ FEDERAL CREDIT UNION (PROPOSED)

We certify that we are the duly elected and qualified chief executive officer and recording officer of the above-named proposed Federal credit union and that at the charter-organization meeting the board of directors passed the following resolution and recorded it in its minutes:

"Be it resolved that this credit union apply to the National Credit Union Administration Board for insurance of its accounts as provided in Title II of the Federal Credit Union Act.

Be it further resolved that the president and treasurer be authorized and directed to execute the Application and Agreements for Insurance of Accounts as prescribed by the Board and any other papers and documents required in connection therewith; to pay all expenses and do all other things necessary or proper to secure and continue in force such insurance."

_____

Chief Executive Officer

_____

Recording Officer, Board of Directors

NCUA 9501

NATIONAL CREDIT UNION ADMINISTRATION

FEDERAL CREDIT UNION

(A corporation chartered under the laws of the United States)

CHARTER NO. _____

ORGANIZATION CERTIFICATE

_____ FEDERAL CREDIT UNION

Charter No. _____

TO NATIONAL CREDIT UNION ADMINISTRATION:

We, the undersigned, do hereby associate ourselves as a Federal credit union for the purposes indicated in and in accordance with the provisions of the Federal Credit Union Act, (12 U.S.C. 1751 et seq.). We hereby request approval of this organization certificate; we hereby apply for insurance of member accounts; we agree to comply with the requirements of said Act, with the terms of this organization certificate and with all laws, rules, and regulations now or hereafter applicable to Federal credit unions.

(1) The name of this credit union shall be _____

_____ Federal Credit Union.

(2) This credit union will maintain its office and will operate in the territory described in the field of membership.

(3) The names and addresses of the subscribers to this certificate and the number of shares subscribed by each are as follows:

NAME	ADDRESS	SHARES

(4) The par value of the shares of this credit union will be as stated in the bylaws.

(5) The field of membership shall be limited to those having the following common bond:

(6) The term of this credit union's existence shall be perpetual: Provided, however, that upon the finding that this credit union is bankrupt or insolvent or has violated any provision of this organization certificate, of the bylaws, of the Federal Credit Union Act including any amendments thereto or thereof, or of any regulations issued thereunder, this organization certificate may be suspended or revoked under the provisions of Section 120 (b) of the Federal Credit Union Act.

(7) This certificate is made to enable the undersigned to avail themselves of the advantages of said Act.

(8) The management of this credit union, the conduct of its affairs, and the powers, duties, and privileges of its directors, officers, committees and membership shall be set forth in the approved bylaws and any approved amendments thereto or thereof.

IN WITNESS WHEREOF we[1] have hereunto subscribed our names this

day of _____, 19__.

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

Subscribed before me, an officer competent to administer oaths, at _____
CITY/STATE

this _____ day of _____,

19__.

Signed _____

Title _____
(Notary public or other competent officer)

[1] At least seven signers, none of whom should administer the oath.

APPROVAL OF ORGANIZATION CERTIFICATE AND CERTIFICATION OF INSURANCE

Pursuant to the provisions of the Federal Credit Union Act (12 U.S.C. 1751 et. seq.), the foregoing organization certificate and insurance of member accounts of _____ _____ Federal Credit Union are approved this _____ day of _____, 19__.

_____

ROGER W. JEPSEN
CHAIRMAN

NATIONAL CREDIT UNION ADMINISTRATION

NCUA 4009

REPORT OF OFFICIAL AND AGREEMENT TO SERVE

TO: NATIONAL CREDIT UNION ADMINISTRATION
(Type or Print)

Proposed _____ Federal Credit Union

☐ Mr. ☐ Ms.
Name
☐ Mrs. ☐ Miss _____
Last First Middle

Title of Newly Elected/Appointed Credit Union Position _____

Maiden Name (If Different From Above) _____

Address (Res.) _____
Street City State Zip Code

Phone + Area Code _____
(Residence) (Business)

Place of Birth _____ Date of Birth _____
City/State

Employer _____ Social Security Number _____

Type of Business _____

Number of years with present employer _____ Your position title _____

Education background (circle highest grade completed)

1 2 3 4 5 6 7 8 9 10 11 12
(Grade and High School)

1 2 3 4 ( )
(College)

MAJOR FIELD OF STUDY _____

Other training or experience _____

Are you willing to accept the position of trust for which you have been selected and to remain in office until such time as a qualified successor is found? ☐ Yes ☐ No

Have you been informed as to the general duties and responsibilities of an official of the proposed Federal credit union and are you willing to devote the time necessary to familiarize yourself with and to perform your duties? ☐ Yes ☐ No

Estimated number of hours per month you will be able to donate as a volunteer _____.

IF THE ANSWER IS YES TO THE FOLLOWING QUESTION, PLEASE PROVIDE INFORMATION AS INSTRUCTED ON REVERSE SIDE OF THIS FORM:

Have you ever been convicted of any CRIMINAL OFFENSE involving dishonesty or a breach of trust? ☐ Yes ☐ No

To facilitate the process of obtaining a credit and background check, please provide the following:

1. Any other names which you have used _____, and,
2. Previous address, (if your address changed over the past 2 years). _____
3. Name of Spouse _____

READ THE FOLLOWING CAREFULLY BEFORE SIGNING

CERTIFICATION AND AGREEMENT TO SERVE:

I certify that the information provided on this form is true and correct. Further, I, the undersigned, having been duly designated to occupy the position(s) indicated above, do hereby agree to serve in the above-stated office(s) of this proposed credit union until the first annual meeting held in accordance with the Federal Credit Union Act and the bylaws of this credit union and until the election of my successor(s). I further pledge to carry out the duties and responsibilities commensurate with said office(s) as promulgated by the Federal Credit Union Act and the bylaws of this credit union. I have read the Privacy Act Notice on the reverse side of this form.

_____ Date _____ Signature _____ Witness

PRIVACY ACT NOTICE

The Privacy Act of 1974 (Public Law 93-579) requires that you be advised as to the legal authority, purpose and uses of the information solicited by this form. Pursuant to Sections 104 and 205(d) of the Federal Credit Union Act, the information in this form is requested for the purpose of completing the investigation required for a new Federal credit union. The information in this form will be primarily used in considering the soundness of the management for the proposed Federal credit union. However, this form may be disclosed to any of the following sources: a congressional office in response to your inquiry to that office; an appropriate Federal, state or local authority in the investigation or enforcement of a statute or regulation; or employees of a Federal agency for audit purposes. Failure to complete this form or omission of any item of information, **except** for disclosure of your social security number, may result in a delay in the process for chartering the proposed Federal credit union. In accordance with Section 792.36 of NCUA's regulations, you are not required to furnish your social security number on this form. Your social security number, if voluntarily provided, will be used to more easily verify the information required by this form. No penalty will result to you as a management official or to the chartering of the proposed Federal credit union if you do not provide your social security number.

Further information needed if answer to CRIMINAL OFFENSE question on reverse side of form was YES:

CRIMINAL OFFENSE:

Nature of offense _____

_____

Date of occurrence _____ Date of conviction _____

Sentence conferred _____

_____

(Attach a separate sheet if space provided is not adequate)

CRIMINAL OFFENSE GUIDELINES

The Federal Credit Union Act, Subchapter II, section 205(d), requires that, "Except with the written consent of the Administrator, no person shall serve as director, officer, committee member, or employee of an insured credit union who has been convicted, or who is hereafter convicted, of any criminal offense involving dishonesty or breach of trust." To assist the Administrator in making a determination of the fitness of a person who is selected to serve and who the organizer believes is qualified to serve as an official, the specific information above will need to be furnished.

If the Board believes that, in view of the facts presented and the date of the offense, they can give their consent to the appointment they will so advise that person in writing. If on the other hand, the Board believes after careful consideration that they cannot in good conscience give their written consent to the appointment they will contact the organizer and ask that another person be selected for the position. The person selected will have to complete a Report of Official and Agreement to Serve.

An indication of whether the bonding company would agree to provide coverage should be included if the person is to serve as treasurer. Bonding company agrees to provide coverage ☐ Yes ☐ No.

APPLICATION TO CONVERT FROM A STATE TO A FEDERAL CREDIT UNION

The _____ Credit Union of _____ (city), _____ (State), incorporated under the laws of the State of _____ on _____, 19___, by decision of its board of directors, hereby makes application to the National Credit Union Administration to convert to a Federal credit union

1. Field of membership of State-chartered credit union. (Use exact wording of charter, articles of incorporation or bylaws, as amended to date.)

_____

_____

_____

_____

_____

2. Is proposed Federal charter to cover same field of membership? Yes ☐ No ☐ If answer is "No," explain fully:

_____

_____

_____

_____

3. Standard financial and statistical reports as of _____, 19___, or comparable forms of reports, certified correct by the treasurer and verified by the affidavit of the president or vice-president, are attached.

4. A schedule of delinquent loans classified 2 to 6 months, 6 to 12 months, and 12 months and over delinquent is attached. (As a minimum, schedule should include for each delinquent loan: loan date, last payment date, unpaid balance, security, and comment on collectibility.)

5. The following policies on loans to members are currently in effect in this credit union:

a. Interest rates on loans: _____

_____

b. Charges incident to making loans which are passed on to borrowers: _____

_____

c. Maturity limits: _____

_____

_____

d. Unsecured loan limit: _____

_____

e. Secured loan limit: _____

_____

f. Types of security accepted: _____

_____

g. Requirements of amortization (Repayment requirements): _____

_____

6. Attached is a list of unsecured loans in excess of the amounts stipulated in the Act. (For each loan show account number, original amount, terms, and unpaid balance.)

7. Attached is a list of loans with maturities in excess of periods stipulated in the Act and the NCUA Rules and Regulations. (For each loan show account number, original amount, terms, unpaid balance, and security.)

8. Types of accounts which members are required or are permitted to maintain: Share ☐ Deposit ☐ Other ☐ (describe):

9. Describe any real estate owned by credit union, including a list of its current market value:

10. Describe and list any investments which are outside of the investment powers of Federal credit unions (Refer to Section 107(7), Federal Credit Union Act):

11. Names and locations of any depository institutions in which the credit union deposits its funds but which are beyond the purview of deposit powers authorized by Section 107(8) of the Federal Credit Union Act.

12. Describe any services rendered to or on behalf of members or of the public, other than accepting and maintaining accounts of members and making loans to members:

13. Describe what you propose to do about any policies, procedures, assets or liabilities which do not comply with the Federal Credit Union Act:

14. Give specific reasons as to why you desire to convert to a Federal credit union:

We hereby authorize the National Credit Union Administration to examine our books and our records and agree to pay an examination fee in accordance with Section 701.6 of the National Credit Union Administration Rules and Regulations.

We, the undersigned _____ Chief Executive Officer and _____ Chief Financial Officer of the _____ Credit Union of _____, State of _____, certify: That we are the duly elected Chief Executive Officer and the Chief Financial Officer, respectively, of said credit union; that the statements made in this Application to Convert from a State to a Federal Credit Union and the schedules attached hereto are true, complete, and correct to the best of our knowledge and belief and are made in good faith.

_____
TITLE:
(CHIEF EXECUTIVE OFFICER)

_____
TITLE:
(CHIEF FINANCIAL OFFICER)

NOTICE OF MEETING OF THE MEMBERS

_____ FEDERAL CREDIT UNION

_____, _____
(City) (State)

THIS PROPOSITION WILL BE DECIDED BY A MAJORITY OF THE MEMBERS WHO VOTE.

Notice is hereby given that a meeting of the members of _____ Federal Credit Union, _____, _____ has been called and will be held at _____ on _____, 19___, at _____ o'clock, ___ .M. for the purpose of considering and voting upon the following resolution:

"RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____ and that its operation under Federal charter be discontinued.

RESOLVED FURTHER, That the board of directors and the officers of this credit union be and are hereby authorized and directed to do all things necessary to effect and to complete the conversion of this credit union from a Federal to a State-chartered credit union"

The board of directors of this credit union has given careful consideration to the advantages and the disadvantages of the proposed conversion and believes it to be in the best interest of the members for the following reasons: _____

The proposed conversion would result in the following disadvantages or adverse changes in services and benefits to the members of the credit union: _____

NCUA 4221

The board of directors recommends that the members approve the proposal to convert to a State charter.

The members' accounts will ☐ will not ☐ continue to be insured by the National Credit Union Share Insurance Fund.

Attached is your ballot. You are urged to bring your ballot to the meeting and to cast your vote after hearing the discussion of the proposal. If you cannot attend the meeting, you are urged to mark your vote, date and sign your ballot, have it postmarked no later than the date and the time announced for the meeting of the members, and mail it to the following address:_____

BY ORDER OF THE BOARD OF DIRECTORS

_____
TITLE:
(CHIEF EXECUTIVE OFFICER)

_____
TITLE:
(CHIEF RECORDING OFFICER)

Issued _____
(Date)

NCUA 4221

AFFIDAVIT

PROOF OF RESULTS OF MEMBERSHIP VOTE ON PROPOSED CONVERSION

We, the undersigned _____
president/vice president and _____
secretary of the _____ Federal Credit Union, hereby swear or affirm as follows:

1. That the conversion proposal as set forth in the attached Notice of Meeting of the Members was fully explained to the members present at said meeting of members.

2. That on the date of the said meeting of members there were _____ members of this credit union qualified to vote; _____ members were present at said meeting; of those members present, _____ members voted in favor of the conversion and _____ members voted against the conversion; of those members not present at the meeting but who filed ballots, _____ members voted in favor of the conversion and _____ members voted against the conversion; and that, without duplication of the votes of any member, a total of _____ members voted in favor of the conversion and _____ members voted against the conversion.

3. That the action of the members of this credit union at said meeting is fully and completely recorded in the minutes of said meeting and all ballots cast by the members on the question of conversion, either at the meeting or by delivery to the credit union, are on file with the secretary of this credit union.

_____
TITLE:
(CHIEF EXECUTIVE OFFICER)

_____
TITLE:
(CHIEF RECORDING OFFICER)

_____
Federal Credit Union

Subscribed before me, an officer competent to administer oaths, at _____
_____, this _____ day of _____, 19___.

Signed _____

(SEAL)

Title _____
(Notary Public or other competent officer)

My Commission Expires _____, 19___.

NCUA 4505

BALLOT FOR CONVERSION PROPOSAL

I have read the notice concerning the meeting of the members of the _____ Federal Credit Union called for _____, 19___, to consider and to vote upon the following proposition:

"RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____, and operation under Federal Charter Number _____ be discontinued.

RESOLVED FURTHER, That the board of directors and the officers of this credit union be and are hereby authorized and directed to do all things necessary to effect and complete the conversion of this credit union from a Federal to a State-chartered credit union."

I hereby cast my vote on the proposition: (Place an X in the square opposite the appropriate statement.)

I vote for the conversion ☐

I vote against the conversion ☐

_____ (Account Number)

_____ (Signature of Member)

Date _____

NCUA 4506

OMB No. 3133
Expiration 9-30-92

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

National Credit Union Administration
Administrative Office
1776 G Street, NW
Washington, D.C. 20456

and to: Office of Management and Budget
Paperwork Reduction Project (3133-)
Washington, D.C. 20503

INFORMATION TO BE PROVIDED IN SUPPORT OF THE APPLICATION OF A STATE CHARTERED CREDIT UNION FOR INSURANCE OF ACCOUNTS

_____ Credit Union

1. Show below the location of the credit union's books and records.

_____
(Street Address)

_____
(City) (State) (Zip) (Telephone)

2. Show the date (month, day, year) in which the credit union was chartered. _____ 19 ____
3. Attach a copy of the credit union's field of membership as shown in the charter, articles of incorporation and/or bylaws, as amended to date. Please identify it as the first schedule in the consecutive number sequence, as discussed in the instructions. Schedule No. _____
4. Potential membership (total number of persons who could be served, including present members). _____
5. Describe type activity sponsor organization is engaged in. (See instructions pertaining to Item No. 5.)

_____

_____

6. Does the credit union operate under standard bylaws provided by the State Supervisory Authority? Yes ☐ (Stop) No ☐ (Complete a.)
   a. Attach a copy of the current official bylaws under which the credit union operated. Schedule No. _____
7. Is the credit union under any administrative restraints by the State Supervisory Authority? Yes ☐ (Complete a.) No ☐ (Stop)
   a. Explain fully on an attached schedule. Schedule No. _____
8. Attach a copy of the latest State supervisory authority examination report or attach a copy of the latest certified public accountant's report if made in lieu of a State supervisory authority examination. Copies of any correspondence from the State supervisory authority which accompanied the examination report should also be included.
9. Attach copies of the Balance Sheet and of the Statement of Income and Expense (or Financial and Statistical Report) for the month-end preceding the date of this application and for the same month of the preceding year. Schedule Nos. _____ . (Identify current year statement with (a) after schedule no. and previous year with (b).)
10. Reserves
    a. Show below the requirements of the State law and/or your bylaws for transfer of earnings to reserves (either monthly or at the end of each accounting period).

11. Delinquent Loans and Charged-off Loans
    a. Attach a copy of the delinquent loan list as of the month-end preceding the date of this application. See instructions pertaining to Item No. 11a. Schedule No. _____ .

b. List below the requested information on delinquent loans for the last four calendar quarters preceding the date of the application (March 31, June 30, September 30 and December 31). Also show total share and loan balances for all members for same period.

(a) *Other Delinquent Categories	(b) Delinquent Categories	Date _____	Date _____	Date _____	Date _____
	2 mos. to less than 6 mos.	$	$	$	$
	6 mos. to less than 12 mos.	$	$	$	$
	12 mos. and over	$	$	$	$
	Totals				
	Share Balances	$	$	$	$
	Loan Balances	$	$	$	$

*See instructions pertaining to Item No. 11 b.

c. List below the requested information on loans charged off during the last three years and the current year. List total of all reserves both revocable and irrevocable for the same period as (balance at year-end or current period).

	19 _____	19 _____	19 _____	Current Yr. to Date _____ 19 ____	*Totals Since Organization
Total Charged Off					
Total Recovered					
Net Charged Off					
Total of all Reserves					

*If this information is available.

12. Does the credit union have any unrecorded or contingent liabilities (including pending law suits or civil actions)? Yes ☐ (Complete a.) No ☐ (Stop)
a. List on a schedule the complete description of such liabilities, including amounts, status of the items, and a description of the circumstances creating the liabilities or contingent liabilities. Schedule No. ___ _____ .

13. Do any asset accounts (other than loans to members, investments, and real estate) have actual values less than the book values shown on the Balance Sheet? Yes ☐ (Complete a.) No ☐ (Stop)
a. List on a separate schedule a description of such assets, showing at least the following information: account number, description of item, book value and actual value. Schedule No. _____ .

14. List below or on an attached schedule any investments or real estate as discussed in the instructions pertaining to Item No. 14. Schedule No._____ . Attach a copy of the credit union's current investment policies. Investments/Loans to Credit Union Service Organization (CUSO) should be listed separately on page 6.

Description of Item	Current Market Value	Current Book Value
_____	$ _____	$ _____
_____	$ _____	$ _____
_____	$ _____	$ _____

15. Individual Share and Loan Ledgers:

a. Were the totals of the trial balance tapes of the individual share and loan ledgers in agreement with the balances of the respective general ledger control accounts as of the month-end preceding the date of this application? Yes ☐ (Stop) No ☐ (Complete b.)

b. What are the differences as of the month end preceding the date of this application?

	Shares	Loans
Balances in General Ledger	$ _____	$ _____
Totals of the trial balance of the individual ledgers	$ _____	$ _____
Differences	$ _____	$ _____

16. Supervisory Committee:

a. What is the effective date of the last complete comprehensive annual audit performed by the supervisory committee? Effective Date _____

(1) If the effective date of the annual audit is not within the last 18 months what is the supervisory committee's target date for completion of a comprehensive audit? Date _____

b. Show the effective date of the supervisory committee's last controlled verification of all members' accounts: Effective Date _____

(1) If all members' accounts have not been verified under controlled conditions during the last two years what is the supervisory committee's target date for completion of the verification program? Date _____

c. If it is necessary to complete either 16 a(1) or 16 b(1), please describe the directors' plans for seeing that the target dates are met. (Discuss below or on an attached schedule.) Schedule No. _____

17. Surety Bond. List below the credit union's surety bond coverage.

a. Name of carrier _____

b. Standard form number of the bond (i.e. 23, 576, 577, 578, 581, 582 CU-1, other) _____

c. Basic amount of coverage $ _____

d. Bond premium paid to (date) _____

e. What is the amount of coverage required by State law or your bylaws? _____

f. Riders to the bond (list below) (i.e., faithful performance, forgery, misplacement, etc.)

18. Credit Union Services

Does the credit union render any services to or perform any functions on behalf of the members, non-members, organizations, or the public other than the usual savings and loan services for members? Yes ☐ (Complete a.) No ☐ (Stop)

a. Attach a schedule describing each activity in full. Schedule No. _____.

19. Does the credit union know of any adverse economic condition that is affecting or will affect its present or future operation or that of the sponsor organization? Yes ☐ (Complete a.) No ☐ (Stop)

a. Attach a schedule describing the condition and its possible effect on the credit union's future. Schedule No. _____.

20. To the best of the credit union's knowledge and belief, has any director, officer, committee member, or employee been convicted of any criminal offense involving dishonesty or breach of trust? Yes ☐ (Complete a.) No ☐ (Stop)

a. Attach a statement describing the circumstances. Schedule No. _____.

21. Lending policies and practices:

a. Complete (on page 4) showing the present policies and practices on loans to members.

b. Complete page 5 in accordance with the instructions pertaining to Item No. 21 b.

LENDING POLICIES AND PRACTICES

	Maximum Loan Amount	Maximum Period of Repayment	Required Amount of Downpayment (Equity)
1. *Credit Union Policies and Practices*			
a. Unsecured Loan Limits			
b. Secured Loan Limits			
(1) New Auto Collateral			
(2) Used Auto Collateral			
(3) Real Estate			
(a) First Mortgage			
(b) Second Mortgage			
(4) Comakers			
(5) Others (describe)			
c. Loans to Organizations			
d. Loans to Director, Officers, or Committee Members			
2. *State Credit Union Law; Bylaws*			
a. Unsecured Loan Limits			
b. Secured Loan Limits			
c. Loans to Directors, Officers, or Committee Members			

List below or on an attached page, any additional policies, including the interest rates applied to members' loans and the method of assessing and accounting for interest income, i.e.: add-on, discount or unpaid balance.

SCHEDULE OF LARGEST LOANS

Complete this form as discussed in the instructions pertaining to Item 21 b.

Account No.	Unpaid Loan Balance	Repayment Period (No. Months)	Status of Repayment		Appraised Collateral Value*	Description of Collateral
			Current	Delinquent (No. Months)		
	$				$	

*If there is more than one type of collateral assign value to each type.

CREDIT UNION SERVICE ORGANIZATION (CUSO)

1. Name of CUSO _____

2. Date of CUSO's Organization _____
(Date of obtaining charter from State)

3. Type of organization (circle one):

a. General Partnership
b. Limited Partnership
c. Joint Ownership
d. Corporation

4. Owners of CUSO (list name, charter number if FCU, and percentage of ownership, if possible).

Name - Charter Number (if FCU)	%	Name - Charter Number (if FCU)	%
a.			
b.			

(Continue on reverse side if additional space is required)

5. Capitalization (list investors and amount of investment in CUSO).

Name - Charter Number (if FCU)	Amount	Name - Charter Number (if FCU)	Amount
a.			
b.			

(Continue on reverse side if additional space is required)

6. List all known services which are being offered by the CUSO (be as specific as possible).

_____

_____

_____

7. Comments (include all other pertinent information, if applicable, not previously discussed).

_____

_____

_____

8. Attach latest Financial and Statistical Report of CUSO, if available.

INSTRUCTIONS FOR COMPLETION OF APPLICATION OF A STATE CHARTERED CREDIT UNION FOR INSURANCE OF ACCOUNTS

The application and all supporting documents should be prepared, photocopied, and submitted in accordance with the procedures outlined in the letter that transmitted these instructions. Additional schedules may be included if deemed appropriate.

All items should be completed. If the answer given to a question is followed by the word "Stop," proceed to the next numbered question. If, however, the answer given is followed by instructions, the additional parts of that question should be completed before going on to the next question.

When page 1 specifies that a schedule should be prepared and attached, please assign a schedule number in consecutive order, starting with number one. Please show the schedule number at the top right-hand corner of the schedule.

Some of the items are self-explanatory and require no special instructions. Other items, however, need special explanations, definitions, and instructions for completion. These are listed below, identified by the same item numbers as appear in Exhibit A.

Item No. 5: Show whether the sponsor organization is associational, occupational or residential. If occupational, please show the specific products or services produced.

Item No. 10: Reserves: The term "reserve" in Exhibit A means that account, or accounts, which represents segregated portions of earnings as provided by the law, bylaws, and/or the credit union's management for the absorption of losses relating to loans to members. (These accounts are usually called Regular Reserve, Reserve for Bad Debts, Guarantee Reserve, Guarantee Fund, Special Reserve for Losses, and Allowance for Loan Losses.)

Item No. 11 a: The delinquent loan list requested should include, for each delinquent loan, the account number of the borrower, date of loan, original amount of loan, unpaid balance, date of last payment of principal, excluding transfers from pledged shares, collateral, and comments regarding the collectibility of each loan in the categories 6 months to less than 12 months and 12 months and over. Payments of interest only should be so identified.

For the purpose of this application, loan delinquency will be determined on the basis of the borrowers' payments in relation to the terms of the notes, as follows:

If a loan is in arrears by two monthly payments plus any part of the third payment, the loan is 2 months delinquent and, therefore, the entire unpaid balance is shown in the 2 months to less than 6 months category. A loan in arrears a total of 6 monthly payments plus any part of the seventh payment would be 6 months delinquent and the entire unpaid balance shown in the 6 months to less than 12 months category. A loan in arrears a total of 12 monthly payments plus any part of the thirteenth payment would be 12 months delinquent and the entire unpaid balance shown in the 12 months and over category.

Item No. 11 b: the schedule provided for the delinquent loan information is set up in delinquency categories of 2 months to less than 6 months, 6 months to less than 12 months, and 12 months and over. Credit unions that compute delinquency using categories other than shown in column (b) may use these other categories and show them in column (a). Credit unions using column (a) need not show the delinquencies in the column (b) categories. It is not necessary to report on loans which are delinquent less than 2 months.

Adverse Trends: If items 8, 9, or 11 indicate adverse trends such as significant decreases in shares, loans or reserves, increases in loan delinquency or loan charge-offs, or unresolved serious exceptions shown in the State examination report the credit union may attach an explanation and identify it as "Explanation of Adverse Trends or Unresolved Examination Exceptions" and assign it a schedule number.

Item No. 14: This item need be completed only if the credit union owns any of the following:

A. Investments in U.S. Government securities guaranteed as to principal and interest or Federal Agency securities, the market value of which is now less than the book value.

B. Real estate other than that used entirely for the credit union's own office(s).

C. Other investments of any type except:

1. Loans to other credit unions.
2. Certificates of, or accounts in, federally insured savings and loan associations.
3. Certificates of deposit in National or State banks.
4. Deposits or accounts in State central credit unions.
5. Common trust investments with International Credit Union Services Corporation (ICUS).

If corporate bonds are listed, please show maturity date, rate of interest on bonds and current yield rate.

If stocks are listed, please show number of shares and bid price.

Please identify the source of the market valuation information and the date of such information.

Item No. 21 b: The largest loans to members should be shown on page 5. In selecting the loans for this Exhibit, list the largest outstanding unpaid loan balance and proceed in descending order by dollar amount until the number specified

below has been shown. The number of such loans to be listed will be determined as follows:

If your credit union has the following no. of outstanding loans	You should list the following no. of the largest unpaid balances
Under 100	5
100 to 199	10
200 to 299	15
300 to 399	20
400 or more	25

If any of the above loans are delinquent, please show the number of months delinquent in the appropriate "Status of Repayment" column.

Page 6: Complete page 6 for each investment/loan to a Credit Union Service Organization (CUSO).

TERMINATION OF INSURANCE

Should the credit union, after obtaining insurance of member accounts, desire to terminate its insured status, this could be accomplished by complying with the provisions of Section 206(a), (c) and (d) of Title II of the Federal Credit Union Act. This action would require approval by a vote of the majority of the members, and ninety days written notice of the proposed termination date to NCUA. Member accounts would continue to be insured for one year following termination of insurance and the insurance premium would be paid during that period. After termination of insurance, the credit union shall give prompt and reasonable notice to all members whose accounts are insured that it has ceased to be an insured credit union.

Sections 206(a)(2) and 206(d)(2) and (3) of the Act provide that an insured credit union may also terminate its insurance by converting from its status as an insured credit union under the Act to insurance from a corporation authorized and duly licensed to insure member accounts. In this event, approval is required by a majority of all the directors and by affirmative vote of a majority of the members voting, provided that at least 20 percent of the members have voted on the proposition. Under this provision for termination, insurance of member accounts would cease as of the date of termination.

APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS STATE CHARTERED CREDIT UNION

Date _____

TO: The National Credit Union Administration Board

The _____ Credit Union,

Insurance Certificate Number _____ (if applicable)

_____ (mailing address), _____ (city) (state) (zip code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To permit and pay the cost of such examinations as the NCUA Board deems necessary for the protection of the interests of the National Credit Union Share Insurance Fund;

2. To permit the Board to have access to all records and information concerning the affairs of the credit union, including any information or report related to an examination made by or for any other regulating authority, and to furnish such records, information, and reports upon request of the NCUA Board;

3. To possess such fidelity coverage and such coverage against burglary, robbery, and other losses as is required by Parts 701.20 and 741 of NCUA's regulations;

4. To meet, at a minimum, the statutory reserve and full and fair disclosure requirements imposed on Federal credit unions by Section 116 of the Federal Credit Union Act and Parts 702 of NCUA's regulations, and to maintain such special reserves as the NCUA Board may by regulation or on a case-by-case basis determine are necessary to protect the interests of members. Any waivers of the statutory reserve or full and fair disclosure requirements or any direct charges to the statutory reserve other than loss loans must have the prior written approval of the NCUA Board. In addition, corporate credit unions shall be subject to the reserve requirements specified in Part 704 of NCUA's regulations;

5. Not to issue or have outstanding any account or security the form of which has not been approved by the NCUA Board, except accounts authorized by state law for state credit unions;

6. To maintain the deposit and pay the insurance premium charges imposed as a condition of insurance pursuant to Title II (Share Insurance) of the Federal Credit Union Act;

7. To comply with the requirements of Title II (Share Insurance) of the Federal Credit Union Act and of regulations prescribed by the NCUA Board pursuant thereto; and

8. For any investments other than loans to members and obligations or securities expressly authorized in Title I of the Federal Credit Union Act, as amended to establish now and maintain at the end of each accounting period and prior to payment of any dividend, an Investment Valuation Reserve Account in an amount at least equal to the net excess of book value over current market value of the investments. If the market value cannot be determined, an amount equal to the full book value will be established. When, as of the end of any dividend period, the amount in the Investment Valuation Reserve exceeds the difference between book value and market value, the board of directors may authorize the transfer of the excess to Undivided Earnings.

9. When a state-chartered credit union is permitted by state law to accept nonmember shares or deposits from sources other than other credit unions and public units, such nonmember accounts shall be identified as nonmember shares or deposits on any statement or report required by the NCUA Board for insurance purposes. Immediately after a state-chartered credit union receives notice from NCUA that its member accounts are federally insured, the credit union will advise any present nonmember share and deposit holders by letter that their accounts are not insured by the National Credit Union Share Insurance. Also, future nonmember share and deposit fund holders will be so advised by letter as they open accounts.

10. In the event a state-chartered credit union chooses to terminate its status as a federally-insured credit union, then it shall meet the requirements imposed by Sections 206(a)(1) and 206(c) of the Federal Credit Union Act and Part 741.6 of NCUA's regulations.

11. In the event a state-chartered credit union chooses to convert from federal insurance to some other insurance from a corporation authorized and duly licensed to insure member accounts, then it shall meet the requirements imposed by Sections 206(a)(2), 206(c), 206(d)(2), and 206(d)(3) of the Federal Credit Union Act.

In support of this application we submit pages 1-6 and Schedules described below:

Schedule No.	Title

CERTIFICATIONS AND RESOLUTIONS

We, the undersigned, certify that we are the duly elected and qualified presiding officer and recording officer of the credit union and that at a properly called regular or special meeting of its board of directors, at which a quorum was present, the following resolutions were passed and recorded in its minutes:

We, the undersigned, certify to the correctness of the information submitted.

Be it resolved that this credit union apply to the National Credit Union Administration Board for insurance of its accounts as provided in Title II of the Federal Credit Union Act.

Be it resolved that the presiding officer and recording officer be authorized and directed to execute the Application and Agreement for Insurance of Accounts as prescribed by the NCUA Board and any other papers and documents required in connection therewith and to pay all expenses and do all such other things necessary or proper to secure and continue in force such insurance.

We, further certify that to the best of our knowledge and belief no existing or proposed officer, committee member, or employee of this credit union has been convicted of any criminal offense involving dishonesty or breach of trust, except as noted in attachments to this application. We further agree to notify the Board if any existing, proposed, or future officer, committee member or employee is indicted for such an offense.

_____

(Signature) Presiding Officer, Board of Directors

_____

(Print or type Presiding Officer's Name)

_____

(Signature) Recording Officer, Board of Directors

_____

(Print or type Recording Officer's Name)

APPLICATION FOR FIELD OF MEMBERSHIP AMENDMENT

(Attach a separate application for each group included in your request for expansion.)

1. Name and address of credit union: _____

_____

2. Name of group/association to be added: _____

_____

(If Association, include Charter/Bylaws.)

Description of business:

_____

Address: _____

_____

3. Total number of potential employees/members to be added: _____

Sponsor's headquarters location: _____

If relevant, work and/or paid from location: also indicate the number of employees at each location:

_____

_____

_____

4. Distance to nearest credit union service facility group has access to: _____

Address of the nearest service facility group has access to: _____

_____

5. Is the group eligible for membership in any other credit union? NO____ YES_____

If yes, give the name and location of the other servicing credit union. Also include, if applicable, a letter of release from the overlapped credit union. _____

6. Attach a letter, on letterhead stationery if possible, from the group requesting credit union service. _____

The regional director may request other documentation appropriate to the situation. This may include current financial statements, branch office financial statements, or other data.

Other comments:

Name and title of credit union board-authorized representative

_____

(e.g., Credit Union Manager/President/CEO-Please print or type)

Signature _____ _____

(Date)

BILLING CODE 7537-01-C

SEP CONTROL LOG

Date credit union received SEP charter amendment:_____

Date Service Started	Date Approved by Board	Board Certification (Authorized Signature)	Name and Location (City, ST) of Sponsor Group	Distance to Nearest CU Branch	Number of Employees/Primary Potential Members	

Control Page Number_____

NCUA 4016

Appendix E—Use of Outside Agents to Solicit Field of Membership Amendments and Members

Purpose

This appendix addresses the National Credit Union Administration's (NCUA) experience with credit unions and arrangements whereby agents outside the organization of the credit union solicit credit union membership in conjunction with the sale of products or services. This section also provides guidelines for these arrangements.

While these guidelines are not mandated by federal law or regulation, they do represent what the NCUA considers to be safe and sound policies and procedures to protect the credit union's assets. Since state laws vary, the guidance may not address every area. Thus, each credit union considering such ventures should obtain a written legal opinion from its counsel, as well as financial counseling from its normal sources.

Background

As credit unions continue to grow and expand their fields of membership to select groups, there has been an increased interest by vendors in mutually beneficial relationships. These business dealings involve the vendor selling services or products and may also include the credit union's financing the sale of items. Generally, such arrangements operate as follows:

- The vendor contacts select group sponsors providing information on the credit union and the insurance or other product to be offered. Alternatively, credit unions may initiate relationships, typically with an automobile dealer, to finance autos. This is commonly called "indirect lending".
- The vendor assists the sponsor in requesting inclusion in the credit union's field of membership. With an indirect lending arrangement, the vendor may have the purchaser prepare a membership application and promptly submits the application, usually by a fax, to the credit union.
- After the field of membership amendment is approved by NCUA or the state regulator, the vendor arranges to meet with employees. In the case of individual membership applications, approval or denial by the credit union's membership officer is required prior to consideration of lending activity. Under no circumstances may a credit union provide membership services conditioned upon subsequent action approving membership.
- The vendor represents the credit union to the employees and enrolls them into membership in accordance with appropriate laws, regulations, and bylaws.
- The vendor explains the products or services being marketed and enrolls the employee in a program or plan. In the case of insurance plans, policies are typically paid by periodic installments, and frequently in one lump sum.
- The vendor arranges for payroll deductions to the credit union. If the employee has an insurance policy or some other plan with periodic installments, generally, the credit union's deduction is increased and arrangements are made for the credit union to forward the appropriate amount to the vendor's company.

These arrangements have been beneficial to some credit unions and vendors. The credit union receives a service—solicitation of members—free of charge. Membership increases and the credit union grows. The vendor has a marketing tool to complement its marketing program. Additionally, in the case of insurance vendors, if the credit union distributes the premiums or other payments directly to the vendor's company, the vendor's paperwork is greatly reduced.

Safety and Soundness Issues

NCUA's experience in these arrangements has shown that potential risk to the credit union exists unless prior planning and internal controls are in place. NCUA has liquidated or taken administrative action in a number of credit unions in recent years when these controls were absent. Some unsafe and unsound practices are described below:

- The credit union did not investigate the vendor's or the vendor's company's reputation, financial soundness, or the authority to do business in the state where the credit union operated. In those cases where NCUA liquidated the credit unions, the companies or firms were of the fly-by-night variety, out to obtain quick profits in short periods of time. Dealing with well established and reputable firms is important if problems arise to member complaints. Additionally, in the event of suits against the company or firm, adequate financial standing can often mitigate the credit union's losses.
- The credit union did not review the programs or products offered to "its" new members. In several instances, the policies were life insurance policies or annuity contracts which called for annual premiums (normally paid by installments) over long periods of time—20 to 30 years. While normal for such contracts, they generally called for limited reimbursement in the event of cancellation, for instance 20 percent reimbursement, if canceled before one year, 45 percent, two years, 55 percent, three years, etc. Many members who enrolled in these contracts did not understand the terms. When they subsequently canceled the policy and received only a 20 percent return, they held the credit union responsible. While the credit union had no legal obligation, it presented public relation problems which could have been avoided.
- The credit union was unfamiliar with the sales techniques used by the vendor to enroll members into the credit union and in the vendor's programs. In the liquidated credit unions mentioned above, unethical methods were used to sign unsophisticated members. It was not uncommon to have them just sign blank forms which included a membership card, payroll deduction authorization, insurance policy, and a loan application and the first year's premium or other payment.
- The credit union did not provide written instructions to the vendor on procedures to enroll members. Thus the vendor contacted groups which the credit union was ill-equipped to serve.
- The credit union authorized the vendor to approve loans en masse to cover first year fees or insurance premiums. NCUA considers this an unsafe and unsound practice which will result in appropriate administrative action. In several liquidated credit unions which had arrangements with insurance vendors, employees were enrolled in the credit union, received a loan to pay the first year's premium and authorized payroll deductions.

The reason the insurance agency proceeded in this manner was to be reimbursed immediately by the carrier for new policies. Such reimbursement ranged from 85 to 105 percent of the first year's premium. Thus an agency that enrolled just 100 new members for $500 per year insurance contracts could have received $42,500 to $52,500 in fees. This desire to obtain reimbursement clouded the vendor's objectivity and resulted in members having unwanted policies, which they generally canceled. At a minimum, since the policy holder received only 20 percent return on the policy, the credit union had a public relations problem collecting its exposed 80 percent. At the worst, the credit union had a loss loan.

- The credit union failed to obtain proper payroll deduction authorizations and authority to remit fees or insurance premiums to the company. In several cases, payroll deduction for all members, even those who chose not to enroll in the vendor's program, were sent to the company first. The company then sent the unauthorized fee or premium deductions to the credit

union. This procedure exposed the credit union to misappropriation of funds by the company, to a potential surety problem, and to an uninsured status until the funds were received in the credit union.

• In another case, a vendor contracted with a credit union to assist credit union members select, locate, and negotiate the purchase or lease of automobiles. Members paid a fee to the vendor during the closing transactions. The vendor also provided marketing assistance to attract select employee groups into the credit union.The vendor was alleged to have falsified and concealed material facts and to have aided prospective credit union members in falsifying credit information to the credit union in attempts to obtain credit. In some cases the prospective member obtained possession of the automobile prior to being accepted as a member and in other cases prior to being approved for the financing. Other operational issues that have led to abuses are the following:

(1) The dealer directly accepting the borrower's payments.

(2) The dealer making payments on behalf of the borrower potentially disguising past due accounts.

(3) The borrower/purchaser applying for the title potentially resulting in an improperly recorded lien.

(4) The dealer financing the down payment thus allowing the borrower to have no stake in the collateral.

(5) The credit union permitting or initiating overdrafts in the vendor reserve or holdback accounts. (Sometimes the credit union requires deposits from the dealer to be held by the credit union to better assure good faith performance by the vendor.)

(6) The credit union placing full reliance on the dealer for credit checks.

(7) Financing indirect loans that are out of the credit union's normal trade area.

(8) The dealer adds costs to the purchase price, such as insurance, warranties, and taxes, thus leaving the borrower with no equity in the car, and the lender with an undercollateralized loan.

(9) Dealers generate a large volume of loans in an attempt to overwhelm credit union staff in hopes that the weaker loans will be approved. (There are instances where dealers resubmit previously denied loans during peak periods in attempts to get them approved.)

(10) The dealer inflates the purchase price or the trade in values, resulting in undercollateralized loans.

(11) An increased potential for making loans to persons who are not eligible to be credit union members exists because of dealer involvement.

(12) By allowing the dealer to negotiate the contract, including interest rates, there is a possibility of inequity among members.

In many instances, the prospective credit union member was pressured to solicit his employer for inclusion into the credit union's field of membership. In certain of these instances, the employer group had existing credit union affiliation with another credit union. In certain other instances, the vendor indicated the prospective member was affiliated with a legitimate group in the credit union's field of membership, when, in fact, the person was not employed by the group. The vendor failed to properly complete required documentation for loans and lease agreements. In some cases the vendor indicated excessively high annual mileage limits in lease agreements.

Recommended Investigative Procedures

Before entering into an agreement with a vendor acting as the credit union's agent in soliciting membership, a federally insured credit union should thoroughly investigate the impact of this action on its financial operations and condition; determine its legal liabilities; clearly define its moral responsibilities; and assure proper control of these activities. The following steps are recommended:

• Thoroughly investigate the financial condition of all corporations, partnerships or other entities involved in the activities. Obtain and review financial statements and credit reports, such as Dun and Bradstreet, on each entity. Consider the need for appropriate bonding by each company.

• Review the organizational structure and reputation of each entity. Included in the review should be a certification that each entity is authorized to do business in the state where the credit union is authorized to do business.

• Review and approve the contracts or policies to be offered. Since members may hold the credit union morally responsible for problems which may occur, the officials should consider the impact of each contract or policy on its public relations with members.

• Determine through a written legal opinion that all forms, documents and procedures used by the credit union to obtain membership, payroll deductions or to transfer funds to a vendor are legal and protect the credit union.

• Ascertain the credit union's liability under the Holder in Due Course rule.

• Determine the type of recourse agreement (full recourse, limited recourse or without recourse) that the credit union will enter into with the vendor.

• Develop cash flow and budget projections showing the effect of increased membership on the credit union's financial condition and ability to serve new members.

• Track by individual vendor, loans, loan delinquency and loan losses for each financing derived from the indirect lending relationship.

• Develop procedures to monitor the activities of vendors as discussed below under Agreements.

• Develop brochures and handouts to be presented to potential members. Among these should be a disclaimer that the credit union does not endorse the products or services and that the vendor can make no commitments regarding membership approval or the granting of loans. Other materials to be presented are discretionary by the credit union.

• Obtain written confirmation from surety that such activities are bondable.

• Ensure the individual in charge of indirect lending is experienced with indirect financing or contacts another credit union with experience in this type of lending.

• Start slow, utilizing only one or two reputable new car dealerships.

Agreements

All arrangements with a vendor should be in writing and reviewed by credit union legal counsel. Such agreements should include, but not be limited to, the following:

• Scope of the vendor's authority to contact sponsors, such as limits on sponsor's assets, number of employees/potential members, financial condition, organizational structure, geographical location, and sponsor stability in the area.

• Procedures for the vendor to follow in contacting sponsors. These should require the vendor to present any product or service as separate and distinct from credit union membership and to state that inclusion in the field of membership is subject to regulatory approval. There should be absolute indication that the credit union is not endorsing any product or services marketed by the vendor.

• Procedures for vendors to follow once a sponsor is included in the credit union's field of membership.

• Procedures for automobile dealers to follow when shopping sales contracts to lenders.

• Understanding and agreements on fees or points paid to automobile dealers.

• Agreement that products or services to be offered and materials, brochures and handouts to be presented by the vendor are to be approved, in advance, by the credit union.

• Agreement that all approved brochures and handouts of the credit union will be distributed.

• Agreement that credit union representatives may accompany the vendor on contacts with sponsors and on membership enrollments.

• Agreement that the credit union may disqualify any vendor or vendor's representative from representing the credit union. Generally such an agreement will include a preliminary approval process as well as monitoring standards to include necessary credit union training.

• Procedures for auditing indirect lending activities with the dealer.

• Any other standard contractual agreements necessary to contract law.

Summary

Credit unions and vendors can engage in mutually beneficial contractual agreements provided that adequate planning and internal controls are instituted. Credit unions engaging in these activities should plan, direct, and control these activities in a safe and sound manner.

Appendix F—Trade Associations

Credit Union National Association (CUNA), P.O. Box 431, Madison, WI 53701, 608–231–4000

National Association of Federal Credit Unions (NAFCU), 3138 N. 10th Street, Suite 300, Arlington, VA 22201, 703–522–4770

National Association of State Credit Union Supervisors (NASCUS), 1901 North Fort Myer Drive, Suite 201, Arlington, VA 22209, 703–528–8351

National Federation of Community Development Credit Unions (NFCDCU), 120 Wall Street, 10th Floor, New York, NY 10005–3902, 212–809–1850

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Friday
June 3, 1994

Part V

Department of Education

National Institute on Disability and Rehabilitation Services; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year 1995

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133F, 84.133G, 84.133N, and 84.133P]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year 1995

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

These programs support the National Education Goals. National Education Goal 6 states: By the Year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

The statute requires that each applicant for a grant demonstrate how its proposed activities address the needs of individuals from minority backgrounds who have disabilities.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and the following program regulations:

Research Fellowships—34 CFR Part 356.

Field Initiated Research—34 CFR Parts 350 and 357.

Special Projects and Demonstrations for Spinal Cord Injuries—34 CFR Parts 350 and 359.

Research Training and Career Development Program—34 CFR Parts 350 and 360.

Program Title: Rehabilitation Research Fellowships.

CFDA Number: 84.133F.

Purpose: The purpose of this program is to build research capacity by providing support to highly qualified individuals to perform research on the rehabilitation of disabled persons.

Selection Criteria: The Secretary evaluates applications for fellowships according to the following criteria in 34 CFR 356.30.

(a) Quality and level of formal education, previous work experience, and recommendations of present or former supervisors or colleagues that include an indication of the applicant's ability to work creatively in scientific research; and

(b) The quality of a research proposal of no more than 12 pages containing the following information:

(1) The importance of the problem to be investigated to the purpose of the Act and the mission of NIDRR.

(2) The research hypotheses or related objectives and the methodology and design to be followed.

(3) Assurance of the availability of any necessary data resources, equipment, or institutional support, including technical consultation and support where appropriate, required to carry out the proposed activity.

ELIGIBLE APPLICANTS: Individuals only are eligible to apply for research fellowships under this program.

Program Authority: 29 U.S.C. 761a(d).

APPLICATION NOTICE FOR FISCAL YEAR 1995

[Research Fellowships, CFDA No. 84.133F]

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Estimated size of awards (per year)	Project period (months)
Research Fellowships	11/15/94	10	$40,000	12

Program Title: Field-Initiated Research.

CFDA Number: 84.133G.

Purpose: This program is designed to encourage eligible parties to originate valuable ideas for research and demonstration, development, or knowledge dissemination projects to improve the lives of individuals with disabilities, and to support research and demonstration, development, or knowledge dissemination projects as described in program regulations that address important activities not supported by Institute-funded research or that complement that research in a promising way.

Invitational Priorities: The Secretary is particularly interested in applications that address one of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications. The invitational priorities are:

(1) Investigations of the unique rehabilitation-related needs of individuals with disabilities from minority backgrounds.

(2) Investigations or demonstrations of innovative services for individuals with disabilities from minority backgrounds.

APPLICATION NOTICE FOR FISCAL YEAR 1995

[Field-Initiated Research, CFDA No. 84.133G]

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Estimated size of awards (per year)	Project period (months)
Field-Initiated Research	11/1/94	20	$125,000	36

Selection Criteria: The Secretary uses the following criteria to evaluate an application under this program.

(a) *Importance of the problem.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The proposed project addresses a problem that is significant to persons with disabilities or to those who provide services to them; and

(2) The proposed project is likely to produce new and useful knowledge, techniques, or devices that will develop or disseminate solutions to problems confronting persons with disabilities.

(b) *Design of the project.* (45 points)

(1) The Secretary reviews each application for a research and demonstration project to determine the extent to which—

(i) The review of the literature is appropriate and indicates familiarity with the relevant current research;

(ii) The research hypotheses are theoretically sound and based on current knowledge;

(iii) The sample populations are adequate and appropriately selected;

(iv) The data collection instruments and methods are appropriate and likely to be successful;

(v) The data analysis measures are appropriate; and

(vi) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses.

(2) The Secretary reviews each application for a knowledge dissemination project to determine the extent to which—

(i) The need for the information has been demonstrated;

(ii) The target populations are appropriately specified;

(iii) The dissemination methods are appropriate to the target population;

(iv) The materials for dissemination are prepared in media accessible to the target population;

(v) There are adequate means of documenting and evaluating the effectiveness of the dissemination activity.

(3) The Secretary reviews each application for a development project to determine the extent to which—

(i) The proposed project will use the most effective and appropriate technology available in developing the new device or technique;

(ii) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art in technology;

(iii) Devices or techniques will be developed and tested in an appropriate environment;

(iv) The applicant considers the cost-effectiveness and usefulness of the device or technique to be developed for persons with disabilities; and

(v) The applicant discusses the potential for commercial or private manufacture, marketing, and distribution of the product.

(c) *Personnel.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The key personnel have adequate training and experience in the required discipline to conduct the proposed activities;

(2) The allotment of staff time is adequate to accomplish the proposed activities; and

(3) The applicant ensures that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Management and Evaluation.* (15 points) The Secretary reviews each application to determine the extent to which—

(1) The resources of the applicant are adequate, appropriate, and accessible to individuals with disabilities;

(2) The proposed budget is adequate and appropriate for the activities to be carried out;

(3) There is a plan, appropriate to the type of field-initiated project, to evaluate the effectiveness of the project in accomplishing its goals and objectives;

(4) The applicant provides a plan of operations, appropriate to the type of field-initiated project, indicating that it will achieve the project objectives in a timely and effective manner; and

(5) Appropriate collaboration with other agencies is assured.

Eligible Applicants: Public and private organizations, including institutions of higher education and Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Program Authority: 29 U.S.C. 762.

Program Title: Special Projects and Demonstrations for Spinal Cord Injuries.

CFDA Number: 84.133N

Purpose: The Special Projects and Demonstrations for Spinal Cord Injuries program provides assistance to establish innovative projects for the delivery, demonstration, and evaluation of comprehensive medical, vocational, and other rehabilitation services to meet the wide range of needs of individuals with spinal cord injuries. As described more fully in 34 CFR 359.11, recipients of awards under this program must establish a multidisciplinary service system, demonstrate and evaluate both the services and the costs and benefits of those services, establish a research environment within the system, demonstrate and evaluate the application of improved methods and equipment, demonstrate methods of community outreach and education, and participate as directed by the Secretary in national studies of the benefits of a spinal cord injury service system.

Invitational Priorities: The Secretary is particularly interested in applications that address one of the following invitational priorities within the scope of model demonstration systems for SCI. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications. The invitational priorities are to address one or more of the following problems within the research, demonstration, services, or data collection aspects of the model SCI system project.

(1) Violence-related spinal cord injuries;

(2) Techniques to maximize the benefits of interactions with independent living programs to achieve community reintegration;

(3) Substance abuse among individuals with SCI;

(4) Disability and rehabilitation-related problems of persons with SCI from minority backgrounds;

(5) The role of families and personal advocacy in successful community reintegration; and

(6) Techniques to facilitate the adoption of the SCI systems model of care into regular health care delivery practices.

Selection Criteria: The Secretary uses the following criteria to evaluate an application under this model SCI Systems program.

(a) *Project Design (20 points).* The Secretary reviews each application to determine to what degree—

(1) There is a clear description of how the objectives of the project relate to the purpose of the program;

(2) The research is likely to produce new and useful information;

(3) The need and target population are adequately defined;

(4) The outcomes are likely to benefit the defined target population;

(5) The research hypotheses are sound; and

(6) The research methodology is sound in the sample design and selection, the data collection plan, the measurement instruments, and the data analysis plan.

(b) *Service Comprehensiveness (20 points).* The Secretary reviews each application to determine to what degree—

(1) The services to be provided within the project are comprehensive in scope and include emergency medical services, intensive and acute medical care, rehabilitation management, psychosocial and community reintegration, and follow up;

(2) A broad range of vocational and other rehabilitation services will be available to persons with severe disabilities within the project; and

(3) Services will be coordinated with those services provided by other appropriate community resources.

(c) *Plan of Operation (15 Points).* The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project;

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective; and

(4) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Persons with disabilities; and

(iv) The elderly.

(d) *Quality of Key Personnel (10 points).* The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training or experience, or both, in spinal cord injury care and rehabilitation and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature or methods, or both;

(3) All the disciplines necessary to establish the multidisciplinary system described in Section 359.11(a) are effectively represented;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its non-discriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Persons with disabilities; and

(iv) The elderly.

(e) *Adequacy of Resources (10) points.* The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative and other necessary support is evident.

(f) *Budget/Cost Effectiveness (10 points).* The Secretary reviews each application to determine to what degree—

(1) The budget for the project is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the project; and

(3) The budget for subcontracts (if required) is detailed and appropriate).

(g) *Dissemination/Utilization (5 points).* The Secretary reviews each application to determine to what degree—

(1) There is a clear defined plan for dissemination and utilization of project findings;

(2) The research results are likely to become available to others working in the field;

(3) The means to disseminate and promote utilization by others are defined; and

(4) The utilization approach is likely to address the defined need.

(h) *Evaluation Plan (10 points).* The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

Eligible Applicants: Public and other nonprofit agencies and organizations are eligible to apply for awards under this program.

Program Authority: 29 U.S.C. 762.

APPLICATION NOTICE FOR FISCAL YEAR 1995

[Special Projects and Demonstrations for Spinal Cord Injuries, CFDA No. 84.133N]

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Estimated size of awards (per year)	Project period (months)
Special Projects and Demonstrations for Spinal Cord Injuries	10/14/94	8–13	$230,000–375,000	60

Program Title: Research Training and Career Development Program

CFDA Number: 84.133P

Purpose: The purpose of this program is to expand capability in the field of rehabilitation research by supporting projects that provide advanced training in rehabilitation research. These projects provide research training and experience at an advanced level to individuals with doctorates or similar advanced degrees who have clinical or other relevant experience, including experience in management or basic science research, in fields pertinent to rehabilitation, in order to qualify those individuals to conduct independent research on problems related to disability and rehabilitation.

Invitational Priorities: The Secretary is particularly interested in applications that address one of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications. The invitational priorities are:

1. Training individuals with disabilities in advanced research in disability and rehabilitation-related fields.

2. Training individuals with disabilities from minority backgrounds in advanced disability and rehabilitation research.

Selection Criteria: The Secretary uses the following criteria to evaluate applications under this program.

(a) *Importance and potential contribution.* (20 points) The Secretary reviews each application to determine to what degree—

(1) The applicant is responsive to any priority established under § 360.32;

(2) The applicant proposes to provide training in a rehabilitation discipline or area of study in which there is a shortage of qualified researchers, or to provide training to a trainee population in which there is a need for more qualified researchers, such as clinicians in rural areas, or clinicians who are directly experienced with underserved populations; and

(3) The applicant is likely to make a significant increase in the number of trained rehabilitation researchers.

(b) *Quality of proposed training program.* (40 points) The Secretary reviews each application to determine to what degree—

(l) The applicant's proposed recruitment program is likely to be effective in recruiting highly qualified trainees;

(2) The proposed didactic and classroom training programs emphasize scientific methodology, are multidisciplinary, comprehensive, and appropriate to the level of the trainees, and are likely to produce qualified independent researchers;

(3) The quality and extent of the academic mentorship, guidance, and supervision to be provided to each individual trainee are of a high level and are likely to produce highly qualified researchers;

(4) The type, extent, and quality of the proposed clinical and laboratory research experience, including the opportunity to participate in research on meaningful topics at an advanced level, are likely to develop individuals with the capacity to perform independent research; and

(5) The opportunities for collegial and collaborative activities, exposure to outstanding scientists in the field, and opportunities to participate in the preparation of scholarly or scientific publications and presentations are extensive and appropriate.

(c) *Personnel and resources committed to the project.* (30 points) The Secretary evaluates each application to determine to what degree—

(l) The activities of the project will be implemented by sufficient and qualified staff who are outstanding scientists in the field;

(2) The project director and other key staff are experienced in the delivery of advanced research training as well as knowledgeable about the methodology and literature of pertinent subject areas;

(3) All required disciplines are effectively included; and

(4) The applicant possesses the appropriate facilities, laboratories, and access to clinical populations and organizations representing persons with disabilities to support the conduct of advanced clinical rehabilitation research.

(d) *Management and operating plans.* (10 points) The Secretary evaluates each application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project;

(2) There is an effective plan for collaboration with other institutions of higher education and organizations whose participation is necessary to ensure effective classroom and clinical research training;

(3) The applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, gender, age or handicapping condition;

(4) The applicant has provided an adequate plan for the use of facilities, resources, supplies and equipment;

(5) The budget for the project is reasonable and adequate to support the proposed activities; and

(6) The applicant provides an appropriate plan for the evaluation of all phases of the project.

Eligible Applicants: Institutions of higher education are eligible to receive awards under this program.

Program Authority: 29. U.S.C. 761a(k).

Application Notice for Fiscal Year 1995

[Research Training and Career Development Program, CFDA No. 84.133P]

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Estimated size of awards (per year)	Project period (months)
Research Training and Career Development Program	10/03/94	3	$150,000	36

Instructions For Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention:

(CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

PART I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

PART II: Budget Form—Non-Construction Programs (Standard Form 424A) and instructions.

PART III: Application Narrative. Additional Materials.

Estimated Public Reporting Burden:

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions.

(Note: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Dianne Villines, U.S. Department of Education, Room 3417 Switzer Building, 400 Maryland Avenue, SW., Washington, DC 20202–2704. Telephone: (202) 205–5450. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Authority: 29 U.S.C. 760–762.

Dated: May 31, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

Frequent Questions

1. Can I get an extension of the due date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the Federal Register. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What should be included in the application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What format should be used for the application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I submit applications to more than one NIDRR program competition or more than one application to a program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the allowable indirect cost rate?

The limits on indirect costs vary according to the program and the type of application.

Applicants in the FIR and SCI grants programs should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate. Applicants for projects in the Research Training and Career Development program are limited to an indirect rate of 8 percent. There are no indirect charges permitted in the Fellowship program.

6. Can profitmaking businesses apply for grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can individuals apply for grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR staff advise me whether my project is of interest to NIDRR or likely to be funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How do I assure that my application will be referred to the most appropriate panel for review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How soon after submitting my application can I find out if it will be funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I call NIDRR to find out if my application is being funded?

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. Will all approved applications be funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000-01-P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D.C. 20503.

Research Fellowships (CFDA No. 84.133F) 34 CFR Part 356.

Field-Initiated Research (CFDA No. 84.133G) 34 CFR Parts 350 and 357.

Special Projects and Demonstrations for Spinal Cord Injuries (CFDA No. 84.133N) 34 CFR Part 359.

Research Training and Career Development Program (CFDA No. 84.133P) 34 CFR Part 360.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*	13. Type of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

[FR Doc. 94-13513 Filed 6-2-94; 8:45 am]
BILLING CODE 4000-01-C

Authorized for Local Reproduction
Standard Form - LLL-A

Federal Register

Friday
June 3, 1994

Part VI

Department of Justice

Civil Rights Division

The American With Disabilities Act Technical Assistance Grants to Promote Voluntary Compliance With the Act; Notice

DEPARTMENT OF JUSTICE

Civil Rights Division, Public Access Section

The Americans With Disabilities Act Technical Assistance Grants To Promote Voluntary Compliance With the Act

AGENCY: Public Access Section, Civil Rights Division, U.S. Department of Justice.

ACTION: Notice of availability of funds and of solicitation for grant applications.

PURPOSE: The Public Access Section of the Civil Rights Division, United States Department of Justice (DOJ), announces the availability of up to $2.25 million to develop and implement projects to inform and educate covered entities and individuals with disabilities about their responsibilities and rights under title II and title III of the Americans with Disabilities Act of 1990 (ADA) and to facilitate voluntary compliance with titles II and III of the Act and the Department's implementing regulations. The term "covered entities" refers to businesses, commercial properties, institutions, State or local governments or their agencies, and other organizations or enterprises that have responsibilities under title II or title III of the ADA.

Grants will be awarded to selected applicants who propose cost-effective and efficient methods of educating entities and individuals with responsibilities and rights under the ADA as well as professionals, such as practicing architects, attorneys, building contractors and others, who provide services to these groups and may assist them in understanding and complying with the requirements of the Act. The primary objective of this program is to encourage and facilitate voluntary compliance with titles II and III of the ADA and the Department's implementing regulations. Only submissions that propose projects of national scope or significance will be considered.

In fiscal year 1994, the Department is seeking grant applications in the following six (6) priority areas:

(1) Dissemination of ADA informational materials to architects and other design professionals at the local, State, and regional level;

(2) Dissemination of ADA informational materials to building contractors, construction tradespeople, building inspectors and plan reviewers at the local, State, and regional level;

(3) ADA education for state and local historic preservation offices, committees, boards and zoning and code officials involved in historic preservation decisions;

(4) ADA education for staff of legal services offices, legal aid societies, and public interest law centers;

(5) ADA education and pilot project for professional mediators;

(6) "The ADA: Civil Rights Law" educational audiovisual materials.

Projects must propose to conduct activities under the grant that have been specifically tailored to meet the particular needs of the targeted audience. Detailed information regarding these specific priorities may be found in the *Program Priorities* section of this solicitation.

Although the Department has identified the above priorities for grant awards during FY 1994, other meritorious projects offering innovative methods of providing ADA Technical Assistance are eligible for consideration. In order to be considered, projects must have a clear statement of need and have national scope or significance.

The Department anticipates that grants will be awarded in amounts ranging from $85,000 to $200,000.

FOR FURTHER INFORMATION CONTACT: Ruth Hall Lusher, ADA Technical Assistance Program Manager, Public Access Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, DC 20035–6738. 1–800–514–0301 (Voice) or 1–800–514–0383 (TTY). This notice and other related information, with the exception of standard forms, are available in alternate formats, e.g., large print, braille, audiotape, and computer disk. With the exception of standard forms, this information may also be accessed through the Civil Rights Division's electronic bulletin board at (202) 514–6193.

Background and Program Description

On January 26, 1992, the major provisions of titles II and III of the Americans with Disabilities Act (ADA) went into effect. The ADA provides legal protection to individuals with disabilities in the areas of public accommodations, commercial facilities, State and local government services, transportation, and employment. Title III prohibits discrimination on the basis of disability in a broad range of public accommodations, commercial facilities and certain transportation services. Title II prohibits discrimination on the basis of disability in State and local government programs and services, including transportation, and State and local government employment. The employment (title I) and transportation (title II, Subpart B) provisions of the ADA are regulated by other Federal agencies and are not the subject of this Notice.

Section 506 of the ADA requires that the Department of Justice render technical assistance to entities and individuals that have responsibilities or rights under title II (subtitle A, State and local government services) and title III (public accommodations and commercial facilities) of the ADA.

Pursuant to this requirement, the Department provides a variety of ADA-related services and information, including:

—A telephone information service (for voice and TTY callers) through which members of the public may obtain recorded information and place orders for ADA materials 24 hours/day and may discuss questions they have about the ADA with information specialists during certain business hours. This service has recently been converted to a toll-free "1–800" number and the number of hours of staffed service has been expanded;

—A speaker's bureau through which organizations can arrange to have ADA experts from the Civil Rights Division speak on a variety of ADA issues; and

—Distribution of written materials, including the Department's regulations implementing titles II and III, technical assistance manuals for titles II and III, an ADA Questions and Answers booklet, and other reference materials. These materials are available in standard print, large print, braille, audiotape, and computer disk. They may also be obtained through the Civil Rights Division's electronic bulletin board.

Under section 506(d) of the Act, the Department has authority to award grants to individuals and non-profit entities for the purpose of supplementing the Department's technical assistance efforts. The Technical Assistance Grant Program is designed to develop and implement cost-effective and efficient strategies to disseminate information about the responsibilities and rights of covered entities and individuals under titles II and III of the ADA, with the goal of fostering understanding of, and facilitating voluntary compliance with, the ADA nationwide.

This grant program is designed specifically to increase the level of knowledge of the ADA in order to ultimately increase the level of voluntary compliance with the ADA. The program is not intended to fund or support site-specific compliance implementation (e.g., funding to make

specific facilities more accessible). Nor is it intended to fund or support inspections, reviews, or tests to determine whether an entity is meeting its compliance obligations. Proposals to conduct projects of these sorts will not be considered.

Since the initiation of the grant program in 1991, the Department has awarded grants to 30 non-profit organizations. The recipients have included a wide range of groups, and the types of projects previously funded include: Projects to develop and disseminate educational materials, including detailed manuals, brochures and videotapes, to explain the regulations and how to comply with the ADA; projects to disseminate existing information to targeted audiences; projects to develop and conduct ADA training programs and seminars; projects to operate telephone information lines to answer various questions about the provisions of the ADA; and projects to develop and incorporate ADA materials into professional educational curricula and programs.

Grantee projects have targeted various audiences of persons with responsibilities under title III or title II of the ADA, persons with disabilities with rights under the ADA, and persons who, because of their areas of professional or technical expertise, provide services that may assist these groups in understanding and complying with the requirements of the Act.

Title III projects have been directed toward educating owners and operators of restaurants and bars, hotels and motels, retail stores, grocery stores, professional offices, recreation and fitness centers, museums and other places of collection, travel and tour agents, hospitals and health care providers, service providers for elderly persons, day care centers, small shops and stores, and large commercial properties.

Title II projects have worked toward educating mayors and governing bodies of U.S. cities with populations over 30,000 and towns with populations under 10,000, law enforcement agencies, 911/emergency response operators, state courts, state social service agencies, public libraries, and persons involved in testing for licensure and certification purposes.

While some projects have focused on educating people with disabilities about their rights under titles II and III of the ADA, others have educated covered entities with responsibilities under the ADA on how to accommodate people with different kinds of disabilities, such as people with mobility impairments, manual impairments, hearing impairments, speech impairments, vision impairments, seizure disorders, mental retardation, mental illness, and people with cognitive, developmental, or learning disabilities.

Other projects have been directed toward persons who can assist others in complying with the ADA, including professors and students in architecture, interior design, industrial design, and landscape architecture schools and programs; state and local building code officials; disability advocates; librarians; and community mediators. Several grant recipients have directed technical assistance toward persons who speak Spanish and other non-English languages.

Some effective strategies used by grantees have been to integrate ADA Technical Assistance materials into established programs and the creation of an innovative project conducted on a statewide basis, that can be studied and replicated by others nationally. For example, the Police Executive Research Forum is creating a set of materials, with some material specifically developed to be integrated into police academy training and others for use in on-the-job roll-call training. The set of materials includes a series of modules on protecting the rights of persons with seizure disorders, speech and hearing impairments, and mental illness. The Chief Officers of State Library Agencies is creating a single source collection of ADA materials that will be available to the public nationwide through their local libraries. The National Association of Towns and Townships is producing ADA materials to train regional and state ADA technical assistance providers to assist them in educating officials from small towns with fewer than 10,000 residents on how to comply with the ADA.

The American Association of Retired Persons will create materials and conduct training sessions throughout the country to educate older persons with disabilities about their rights under the ADA. The results of a South Carolina project, which partners different State agencies and a state-based advocacy organization for persons with mental illness to examine and correct ways in which social service and public benefit programs discriminate against persons with mental illness, will be disseminated nationwide.

A description of all projects, including a list of materials that have been or are being produced by grant recipients, may be obtained by calling 1–800–514–0301 (Voice) or 1–800–514–0383 (TTY) or the electronic bulletin board at (202) 514–6193.

Applicants should be aware that the Department does not fund projects to research or resolve issues that are outside the scope of the Department's current ADA regulations and court interpretations. For example, the Department would not fund a project concerning the design of accessible physical environments for children because standards have not yet been adopted by the Department in this area.

Only proposals to conduct projects of national scope or significance will be considered. For example, a professional or trade association at the national level that proposes to target educational information to its membership nationwide might be funded. A local or state trade association with no national affiliation or reach would not be funded, unless the local or state group could adequately demonstrate its ability to draw national attention to, and participation in, its project.

The Department is particularly interested in receiving proposals that: specifically address how members of minority communities will be included within the population targeted by the applicant for receipt of technical assistance; reflect an ability to begin project activities in an expedited manner; utilize materials already developed by Federal agencies and their grantees or contractors; represent joint ventures between organizations that represent persons with disabilities and organizations that provide services that may assist covered entities in their compliance efforts; and engage national membership organizations in supporting the project's objectives.

Eligible Applicants. This grant competition is open to individuals and to non-profit organizations, including trade and professional associations or their subsidiaries, organizations representing State and local governments or their employees, other organizations representing entities covered by the ADA, State and local government agencies, and national and local organizations representing persons with disabilities.

Grant Period and Award Amount. The period of performance will be twelve months from the date of the grant award. A total of $2.25 million is available for this technical assistance grant program; it is anticipated that grants will be awarded in amounts ranging from $85,000 to $200,000. However, the estimated funding level in this notice does not bind the Department of Justice to make any awards or to any specific number of awards or funding levels.

Application Deadline. Applications must be received by the close of

business (5:30 p.m. EST) on August 2, 1994 at the Public Access Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, or 1425 New York Ave., NW., room 4039, Washington, DC 20035–6738. Applications may not be sent by Fax. Applications received after 5:30 p.m. on August 2, 1994 will not be considered for award, even if the application was postmarked before that date. Incomplete applications will not be considered for award. In order to be considered complete, an original and two copies of the application packet described in the *Application Requirements* section must be submitted.

Program Priorities

Since the inception of the ADA Technical Assistance Grant Program in 1991, the Department has funded over 30 projects, with the primary focus being to educate entities and individuals with responsibilities and rights under titles II and III of the ADA. Many of the audiences targeted have been those with title III responsibilities, including owners and operators of retail stores, supermarkets, hotels and motels, day care centers, and health care and other service providers. Projects directed toward educating those with obligations under title II have included law enforcement agencies, state court systems, 911/emergency response operators, city and town governing bodies, and publicly funded hospitals and other health care services. Targeted audiences have also included people with disabilities with rights under titles II and/or III.

As the purpose of the Grant Program is to promote and facilitate voluntary compliance with the ADA, the Department believes that it is necessary to identify, educate and work with professionals at the local, State, and regional level who, because of their professional or technical expertise, provide services to the above audiences and may assist them in understanding and complying with the requirements of the Act. For this reason, the Department has expressed a particular interest in receiving proposals that target this specific audience in the following six priority areas:

Priority 1: Dissemination of ADA informational materials to architects and other design professionals at the local, State, and regional level. Architects and other design professionals play an essential role in ensuring that newly constructed facilities and additions or alterations to existing facilities are designed and built in accordance with the ADA Standards for Accessible Design. Businesses, State and local governments, service agencies and other ADA covered entities rely on the knowledge and expertise of the architect; they expect that the professional will design a building or facility that will meet a myriad of needs, one of which is compliance with the ADA Standards for Accessible Design.

With access to educational materials and services, architects and design professionals at the local level can help business owners comply with the ADA and reduce claims of discrimination by people with disabilities based on inaccessible facilities or elements. Since the enactment of the ADA, a wealth of educational material on complying with the accessible design requirements has been developed by Federal agencies to be used by entities and individuals with responsibilities and rights under the ADA and professionals who may provide services that will assist these groups in understanding and complying with the requirements of the Act. Examples of such information include the Department of Justice's *ADA Standards for Accessible Design*, and titles II and III *Technical Assistance Manuals*; the Access Board's *ADA Accessibility Guidelines Checklist* and various *Technical Assistance Bulletins* (addressing accessibility topics such as detectable warnings, visual alarms, TTYs, slip-resistant surfaces and using ADAAG). Other materials have been produced through federally funded grant programs and examples include DOJ funded projects such as the American Hotel and Motel Association's *Accommodating All Guests* compliance manual, the Food Marketing Institute's *ADA Starter Kit for Supermarkets* and the *ADA Compliance Manual for Supermarkets*, and the National Restaurant Association's *ADA: Answers for Foodservice Operators* compliance manual and *A Warm Welcome* videotape on compliance for the food service industry. Examples of grants funded through the National Institute on Disability and Rehabilitation Research (NIDRR) include numerous *ADA Design Tech Sheets* (illustrated technical materials addressing such topics as signage, areas of rescue assistance, accessible route, ATMs, curb ramps, ground and floor surfaces, etc.), and the *Title II Action Guide for State and Local Governments*.

The Government has also created a variety of informational services, such as the Department of Justice's toll-free ADA Information Line, through which individuals can speak directly with an ADA Specialist, or access recorded information about the requirements of the ADA 24 hours a day. Information about the ADA may also be downloaded through the Department's Electronic Bulletin Board. Similar services are available through other Federal agencies.

Despite the existence of these materials, many of which are available free of charge from the Department and other Federal agencies, many professionals at the local level are unaware of their availability and continue to design and build facilities that do not comply with the ADA Standards for Accessible Design.

The goal of Priority 1 is to develop a nationwide system to inform architects and design professionals about the ADA and the availability of these informational materials and services to ensure dissemination of existing ADA materials to practicing architects and other design professionals at the local level. The project should utilize existing channels, such as professional and trade organizations, trade publications, meetings, and electronic media to inform as wide an audience of design professionals as possible of the availability of informational materials and services and to assist with dissemination. In establishing this system, the project should seek to establish links between existing Federal information resources and private dissemination channels and implement an approach through which the Department can continue to disseminate new materials to targeted audiences, as they are developed, on an on-going, long-term basis following the conclusion of the grant period. Types of mechanisms that could be used to accomplish this might include the development of articles for publication in trade journals, the distribution of sample or resource packets to architectural libraries, the presentation of information about the ADA and the availability of Federal resources and materials through computer networks and electronic media, etc.

Priority 1 is an ADA informational materials dissemination project for architects and design professionals at the local, State, and regional levels that shall include the following major components:

—Identify and compile specific materials that have been or are being developed by the Department of Justice, its grant recipients, the National Institute on Disability and Rehabilitation Research's grant recipients, the Architectural and Transportation Barriers Compliance Board and other Federal agencies as appropriate that the applicant intends to publicize to the targeted populations;

—Identify professional and trade organizations that serve architects and design professionals that have regional, state and local affiliations through which information and materials could be disseminated;
—Identify professional and trade journals and other publications through which the availability of materials can be publicized at the local, State, and regional levels;
—Establish size of target audience and state explicitly the number of people expected to be served in the course of the project's activities;
—Specify how the project will reach all parts of the targeted audience, including professionals serving racial and ethnic minority communities;
—Develop a plan to effectively publicize and disseminate the availability of material available from Federal agencies and their grantees, utilizing, to the extent possible, existing dissemination mechanisms for architects and design professionals including professional and trade journals, regional and national conferences, etc. Such a plan should ensure that the dissemination of materials will continue after the grant period has ended;
—Develop, reproduce and disseminate marketing materials such as pamphlets, flyers, articles, ad slicks or other products necessary to inform architects and design professionals of the availability of ADA materials;
—Create articles on the requirements of the ADA for publication in media appropriate to target audience;
—Coordinate with the Department to ensure that future new or updated materials will continue to be disseminated to professionals at the local level following the conclusion of the grant period;
—Develop a plan to evaluate the effectiveness of the project and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience.

Priority 2: Dissemination of ADA informational materials to building contractors, construction tradespeople, building inspectors and plan reviewers at the local, State, and regional levels. Building contractors, construction tradespeople, building inspectors and plan reviewers play an essential role in ensuring that new construction, additions, and alterations are accessible. Many smaller projects, particularly alterations, are accomplished by contractors and tradespeople without the use of architects or other design professionals. Business owners, State and local governments, service agencies and other ADA covered entities rely on the knowledge and expertise of builders to meet a myriad of needs, one of which is compliance with the ADA Standards for Accessible Design; and contractors and tradespeople rely on building inspectors and plan reviewers for advice and assistance in understanding and applying these rules.

With access to educational materials and services, building contractors and skilled construction tradespeople at the local level can help business owners comply with the ADA and reduce claims of discrimination by people with disabilities based on inaccessible facilities or elements. Since the enactment of the ADA, a wealth of educational material on complying with the accessible design requirements has been developed by Federal agencies for use by entities and individuals with responsibilities and rights under the ADA and professionals who may provide services that will assist these groups in understanding and complying with the requirements of the Act. Examples of such information include the Department of Justice's ADA Standards for Accessible Design, and title II and III Technical Assistance Manuals; the Access Board's ADA Accessibility Guidelines Checklist and various Technical Assistance Bulletins (addressing accessibility topics such as detectable warnings, visual alarms, TTYs, slip-resistant surfaces and using ADAAG). Other materials have been produced through federally funded grant programs and examples include DOJ funded projects such as the American Hotel and Motel Association's Accommodating All Guests compliance manual, the Food Marketing Institute's ADA Starter Kit for Supermarkets and the ADA Compliance Manual for Supermarkets, and the National Restaurant Association's ADA: Answers for Foodservice Operators compliance manual and A Warm Welcome videotape on compliance for the food service industry. Examples of grants funded through the National Institute on Disability and Rehabilitation Research (NIDRR) include numerous ADA Design Tech Sheets (illustrated technical materials addressing such topics as signage, areas of rescue assistance, accessible route, ATMs, curb ramps, ground and floor surfaces, etc.), and the Title II Action Guide for State and Local Governments.

The Government has also created a variety of informational services, such as the Department of Justice's toll-free ADA Information Line, through which individuals can speak directly with an ADA Specialist or access recorded information about the requirements of the ADA 24 hours a day. Information about the ADA may also be downloaded through the Department's Electronic Bulletin Board. Similar services are available through other Federal agencies.

Despite the existence of these materials, many of which are available free of charge from the Department of Justice and other Federal agencies, many individuals at the local level are unaware of their availability and continue to build or alter facilities that do not comply with the ADA Standards for Accessible Design.

The goal of Priority 2 is to develop a nationwide system to inform building contractors, construction tradespeople, building inspectors and plan reviewers about the ADA and the availability of these informational materials and services to ensure the dissemination of existing ADA materials to contractors and others at the local level. The project should utilize existing channels, such as trade organizations, trade publications, meetings, and electronic media to inform as wide an audience of contractors and others as possible of the availability of the material and to assist with dissemination. In establishing this system, the project should seek to establish links between existing Federal information resources and private dissemination channels and implement an approach through which the Department can continue to disseminate new materials, as they are developed, on an on-going, long-term basis following the conclusion of the grant period. Types of mechanisms that could be used to accomplish this might include the development of articles for publication in trade journals, the distribution of sample or resource packets to libraries serving the target population, the presentation of information about the ADA and the availability of Federal resources and materials, and making the same available through computer networks and other electronic media.

Priority 2 is an ADA informational materials dissemination project for building contractors, construction tradespeople and others at the local, State, and regional level that shall include the following major components:

—Identify and compile specific materials that have been or are being developed by the Department of Justice, its grant recipients, the National Institute on Disability and Rehabilitation Research's grant recipients, the Architectural and Transportation Barriers Compliance

Board and other Federal agencies as appropriate that the applicant intends to publicize to the populations to be served by the project;
—Identify professional and trade organizations serving the targeted population with regional, State and local affiliations through which information and materials could be disseminated;
—Identify professional and trade journals and other publications through which the availability of materials can be publicized at the local, State, and regional level;
—Establish size of target audience and state explicitly the number of people expected to be served in the course of the project's activities;
—Specify how the project will reach all parts of the targeted audience, including racial and ethnic minority communities;
—Develop a plan to effectively publicize and disseminate the availability of material available from Federal resources and their grantees utilizing, to the extent possible, existing dissemination mechanisms for the targeted population including professional and trade journals, regional and national conferences, etc.;

Such a plan should ensure that dissemination will continue after the grant period has ended;
—Develop, reproduce and disseminate marketing materials such as pamphlets, flyers, articles, ad slicks or other products necessary to inform the targeted population of the availability of ADA materials;
—Create articles on the requirements of the ADA for publication in media appropriate to target audience;
—Coordinate with the Department to ensure that future new or updated materials will continue to be disseminated to the targeted population at the local level following the conclusion of the grant period;
—Develop a plan to evaluate the effectiveness of the project and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience.

Priority 3: ADA education for State and local historic preservation offices, historic preservation committees and boards, and local zoning and code officials involved in historic preservation decisions. Staff and officials of State and local historic preservation offices, members of historic preservation committees and boards, and local zoning and code officials involved in historic preservation decisions need guidance on effective methods of complying with the ADA without destroying the historic nature of the facility or element. While some educational materials currently exist, the need for these audiences to learn about and understand how to implement practical solutions remains paramount.

The goal of Priority 3 is to undertake a nationwide effort to educate State and local historic preservation offices, historic preservation committees and boards, and zoning and code officials involved in historic preservation decisions on the requirements of the ADA and how to maintain the integrity of the historic property while providing accessibility as required under the ADA that promotes independence and dignity. Projects of this type should focus specifically on providing practical solutions to access problems faced by historic properties. Projects to develop and disseminate educational materials, to develop and conduct training using existing materials, or to develop materials and conduct training will be considered.

Priority 3 is an ADA education project for historic preservation officials that shall include the following major components:
—Develop educational materials that focus on solutions to access problems specific to properties such as historic museums, historic buildings housing public accommodations and those housing State and local government programs. The materials shall illustrate how people with disabilities use the built environment and how the provisions of the ADA Standards for Accessible Design can be effectively used to provide mainstream access without destroying the historic significance of the building or facility;
—Establish size of target audience and state explicitly the number of people expected to be served in the course of the project's activities;
—Identify and coordinate with established professional organizations, such as the National Trust for Historic Preservation, the National Conference of State Historical Preservation Officers, and State Historical Commissions, etc., through which information and materials could be disseminated;
—Specify how the project will reach all parts of the targeted audience, including racial and ethnic minority communities;
—Utilize existing federally approved materials to the maximum extent possible;
—Develop and implement a strategy to disseminate the materials nationally, coordinating with other state and national historic preservation organizations as appropriate;
—If the project includes a training component, identify topics to be covered and the rationale for selecting those topics and develop and implement a plan to select trainers;
—If the project includes training, a minimum of five regional sessions should be held. Criteria to be used to select the training locations should be carefully thought out and described in the applicant's proposal;
—Develop and implement a strategy to publicize information about the ADA and the availability of materials and training sessions nationally through organizations, print and electronic media;
—Create articles on the requirements of the ADA for publication in media appropriate to target audience;
—Develop a plan to evaluate the effectiveness of the project and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience.

Priority 4: ADA education for staff of legal services offices, legal aid societies, and public interest law centers. For a person with a disability, access to technical assistance and good legal advice about the ADA is severely limited by the lack of public interest lawyers trained in the requirements of the ADA. The right to legal advice and their right to file private lawsuits is a critical component of the ADA.

According to the latest census data, over 20% of the 12.9 million people of working age reporting the presence of a work disability have family incomes below the Federal poverty threshold. Because of this, people with disabilities are consistently being referred to public interest law centers, legal services offices, and legal aid societies for affordable legal assistance, and yet the vast majority of staff at those offices have not been even minimally trained on the requirements of the ADA. For the high percentage of individuals with disabilities who rely on low-cost or free legal services, it is critical to the successful implementation of the ADA that these lawyers receive training on the ADA.

The goal of Priority 4 is to develop and conduct a nationwide training program for staff and boards of legal services offices, legal aid societies, and public interest law centers about titles II and III of the ADA.

Priority 4 is an ADA project to educate legal services, legal aid societies and public interest law centers that shall include the following major components:

—Develop and conduct a minimum of five regional ADA training seminars;
—Establish size of target audience and state explicitly the number of people expected to be served in the course of the project's activities;
—Specify how the project will reach all parts of the targeted audience, including legal groups serving racial and ethnic minority communities;
—Develop innovative approaches to reach the widest possible audience with funds available;
—Identify and select for training staff and board members of public interest law centers, legal services groups, and legal aid societies from throughout the United States. The following factors should be considered in the selection process: geographical representation from the 50 states; representation from urban, suburban, and rural areas; representation from legal groups serving citizens with minority backgrounds;
—Develop a plan for publicizing the availability of the training, using, to the extent possible, existing dissemination mechanisms for legal services and public interest law centers including publications, professional journals, local, state, and national meetings, etc.;
—Develop training materials and activities appropriate to public interest lawyers, utilizing existing federally approved materials to the maximum extent possible;
—Provide training to selected staff and board members of public interest law centers, legal aid societies, and legal services groups on title II and title III of the ADA and on recent policy developments;
—Create articles on the requirements of the ADA for publication in media appropriate to target audience;
—Develop a plan to evaluate the effectiveness of the project and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience.

Priority 5: ADA education and pilot project for professional mediators. The ADA encourages the use of means other than litigation to resolve ADA disputes. Professional mediators provide an alternative forum for complainants and respondents to resolve their misunderstandings or disagreements about the ADA's requirements. Effective use of professional mediators trained to mediate ADA cases can help bring about compliance with the ADA, while saving both parties from the high costs, delays, and inconveniences often associated with litigation.

The goal of Priority 5 is to train a select number of professional mediators nationwide about title III of the ADA, refer title III cases to these mediators for mediation, monitor the outcome of mediation efforts, and evaluate and disseminate the evaluation of the project to mediators and other interested parties nationwide, so that the project can be effectively replicated in other areas of the country.

Priority 5 is an ADA education and pilot project for professional mediators that shall include the following major components:

—Work with and through one or more national organizations representing professional mediators to assist in publicizing the project to mediators who may participate in the project, as well as to assist in disseminating the final evaluation of the project to mediators and other interested parties nationwide;
—Establish size of target audience and state explicitly the number of people expected to be served in the course of the project's activities;
—Specify how the project will reach all parts of the targeted audience, including mediators serving racial and ethnic minority communities;
—Develop criteria to be used to select the mediators to participate in the project;
—Develop and implement an ADA training program and provide follow-up technical assistance to the participating mediators;
—Develop and implement a plan for referring cases to the participating mediators and for monitoring the status of the mediators' ADA project-related caseloads;
—Provide mediation for a specified number of cases, at no cost to the disputing parties, within nine months after the completion of training;
—Create articles on the requirements of the ADA for publication in media appropriate to target audience;
—Develop a plan to evaluate the effectiveness of the project and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience;
—Develop a plan for disseminating the training materials nationwide.

Priority 6: "The ADA: Civil Rights Law" educational videotape. Lack of recognition that the ADA is a civil rights law, long held myths and stereotypes, and ignorance about the attitudinal and physical discrimination that people with disabilities face in their daily lives—not being able to enter the building to attend a child's school play; not being allowed to play on a sports team or participate in the town meeting; not being able to order a hamburger, drop off dry cleaning, or to rent a car—are thought to be major impediments to voluntary compliance with the ADA.

The goal of Priority 6 is to produce and disseminate educational audiovisual materials illustrating discrimination, stereotypes and attitudinal barriers encountered by people with disabilities. The goal of this project is to identify the ADA as a civil rights law, distinct from a "benefit program", with the same historical background and battles associated with other types of civil rights legislation. The project will draw comparisons between discrimination encountered by people with disabilities and other protected classes of individuals and the historical struggle people with disabilities and others faced to gain the right to equality. Finally, the project will focus on the impact that complying with the ADA can have on changing stereotypes, eliminating barriers, and increasing access to goods, services, and activities.

Educating the public about the abilities of people with disabilities to function well in an accessible environment and dispelling oft held myths and stereotypes can lead to increased voluntary compliance with the ADA. Materials developed in this project shall portray persons with disabilities in a positive manner and will be used to increase the general public's awareness of disability, accessibility and the ADA and its historical place in the development of civil rights legislation. The project should also strive to increase the level of communication between covered entities, people with disabilities, and providers of consultation services.

Priority 6 is an ADA educational audiovisual project that shall include the following major components:

—Create and disseminate broadcast quality educational videotapes, identifying the ADA as a civil rights law with protection for people with disabilities parallel to that provided under other civil rights legislation;
—Edit to provide videotapes of varying lengths, suitable for use in a variety of broadcast situations (e.g., short segments to be used to promote the videotape or on magazine type

programs, longer segments for viewing by audiences attending a meeting, etc.);
—Identify target audience and state explicitly the number of people expected to be served in the course of the project's activities;
—Specify how the project will reach all parts of the targeted audience, including racial and ethnic minority communities;
—Identify types of attitudinal and physical discrimination that prevent people with disabilities from gaining equal opportunity and possible methods to eliminate discrimination;
—Illustrate the increased independence persons with disabilities experience when barriers are removed;
—Identify and select professional, civic and business organizations to disseminate the video through their local, state and regional affiliations;
—Identify and select public and cable television networks to air and disseminate copies of the videotape for local, regional, and national viewing;
—Develop and implement a strategy for disseminating the video to selected organizations;
—Develop a plan to publicize the project and the product nationally through print and electronic media;
—Create articles on the requirements of the ADA for publication in media appropriate to target audience;
—Develop a plan to evaluate the effectiveness of the project and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience;
—Develop a plan to disseminate the results of the project.

Other Meritorious Projects. The Department also seeks grant applications involving other meritorious projects that offer innovative methods of providing ADA Technical Assistance to entities and individuals with rights and responsibilities under the ADA and professionals who provide services to these groups and may assist them in understanding and complying with the ADA. Only those projects with a clear statement of need and of national scope or significance will be considered. Other Meritorious Projects shall include the following major components:
—Statement of need. Applicants should indicate why their project is needed and how they have determined that the issues or topics they intend to address are, in fact, the issues or topics that will best serve the needs of the population for whom the project has been designed. Some populations, for example, may need to be made aware of the ADA and be provided with basic information, while others may be familiar with the basic legal requirements, but need information on how to translate the legal standards into concrete, practical solutions for achieving compliance. Others may need in-depth education on specific aspects of the law;
—Description of the target audience by describing such factors as geographic scope, type of population (type of business, type of governmental unit, type of disability, type of professional service offered), or other relevant characteristics. Applicants should also state explicitly the number of people expected to be served in the course of the project's activities;
—Specify how the project will reach all parts of the targeted audience, including racial and ethnic minority communities;
—Provide a statement of goals and objectives of the project. Applicants should describe in concrete terms what is to be accomplished during the project period. The anticipated impact on voluntary compliance efforts should also be clearly articulated;
—Develop a plan to disseminate the materials or results of the project nationwide;
—Work with and through established organizations, where possible, to reach the largest segment of the population possible;
—Utilize existing Federally-approved materials to the maximum extent possible;
—Develop a plan to evaluate the effectiveness of the project and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience.

Selection Criteria

Applicants will be evaluated in each of the following four selection criteria areas for a total of 100 points:

Project Strategy and Plan of Action (50 Points)

Applicants must demonstrate a thorough understanding of the grant proposal priority, including the background, intended audience and intended approach. Applicants applying under the Other Meritorious Project category must demonstrate an in-depth knowledge of the target audience and their specific needs. Project goals and expected outcomes should be clearly articulated. Clarity, quality, and appropriateness of the plans, methodologies, and procedures to achieve the goals listed in the application will be carefully considered. Plan of action must be sound and well-reasoned, with evidence of the ability to implement plan immediately and complete the project in a timely manner. Applicants must demonstrate the ability to produce and/or disseminate information and materials within the period of performance. Project strategy must include a clear plan for objectively evaluating the effectiveness of the project, as described in the *General Requirements for Grant Recipients* section of this solicitation.

Staff Capability (25 Points)

Applicants must provide evidence of qualified personnel with particular experience in the areas addressed in the application. The application must contain necessary position descriptions, resumes, and assurances of availability of staff (existing and contract staff) with appropriate competencies and experience. Duties outlined for grant-funded positions must be clearly appropriate to the scope of the work being carried out under the project.

Organizational Capability and Management Plan (20 Points)

Applicants must demonstrate the ability to effectively reach and work with the targeted audience and offer evidence of proven organizational ability to provide high quality results utilizing appropriate key personnel. Applications must include a management plan that provides evidence of project control by management, efficient and timely use of staff and other resources, and effective quality control mechanisms.

Resources/Facilities/Equipment (5 Points)

Applicants must demonstrate the availability and appropriateness of resources (other than personnel), physical facilities, and equipment proposed to be used to carry out the project.

General Requirements for Grant Recipients

The following general grant program requirements should be considered by each applicant in developing both its project timeline and budget. Successful applicants must adhere to all conditions as specified; any deviation from the requirements in this section must be negotiated with DOJ.

Grantee Orientation and Coordination. Grantees are expected to coordinate their project activities, where

appropriate, with other Federally sponsored ADA technical assistance activities, including those of the Department of Justice (DOJ), the National Institute on Disability and Rehabilitation Research (NIDRR), the Architectural and Transportation Barriers Compliance Board (ATBCB), the Equal Employment Opportunity Commission (EEOC) and their grantees. The purpose of this coordination is to avoid duplication of effort, to utilize materials already developed by Federal agencies and grant recipients, and to otherwise refer to and take advantage of ADA resources that have already been developed. Additionally, successful applicants will receive an orientation that will familiarize them with projects being undertaken by other successful applicants. Thereafter, 1994 grantees will be expected to exchange information and provide support to each other where appropriate.

Evaluation. One goal of this grant program is to determine which education, information dissemination, and compliance assistance strategies are most effective in reaching as many persons as possible in the targeted population with information that serves their particular needs. It is therefore essential that each project describe reliable and objective criteria to evaluate the effectiveness of the project at the conclusion of the period of performance and to provide this information to the Department.

Post-Award Monitoring. The Department intends to provide grant recipients with the maximum amount of post-award guidance and technical assistance possible within budget and staff constraints. Within approximately one month of the grant award, the Department will conduct a one-day training session on the ADA and grant management procedures. Each grant recipient will be invited to send two staff persons to this training session. Funds for travel to Washington, D.C. for this training should be included in the proposed grant budget. Applicants are also advised that DOJ staff will make periodic site visits to provide grant recipients with guidance and technical assistance and to monitor the progress of the grant. The Office of Justice Programs (OJP), a component of the Department of Justice, will provide financial management and other services in support of the Public Access Section in the administration of this program. Applicants are advised that copies of the quarterly progress reports sent to OJP must also be sent to the Public Access Section.

DOJ Review of Grantee Materials. All materials used or developed by grant recipients must be approved by DOJ in advance of use. Applicants should anticipate careful review of any newly developed materials by the Department to ensure that the materials are legally accurate and should allow ample time in their proposed project schedules for this review.

Particular attention should be paid to budgetary and staffing needs to ensure that materials to be disseminated will reach the targeted population in a timely manner during the grant period.

Availability of Existing DOJ Materials. Publications that are currently available free of charge from the Department of Justice (DOJ) will be provided to the grantee as resources permit. If an applicant intends to disseminate materials of a nature similar to materials produced by previous DOJ grant recipients or recipients of grants from other Federal agencies, including the National Institute on Disability and Rehabilitation Research, it should coordinate such requests with the Department. In general, funds for the reproduction of such materials should be included in the proposed grant budget.

Copyrights. Grant recipients are free to copyright any materials they develop, if they so choose, and may continue to reproduce and distribute such materials after the grant period is over. Applicants should be aware that DOJ retains the right to reproduce their materials and to disseminate them to the public at its will, without payment of royalties to the grantee.

Program Income. Grantee recipients may charge for grant-related activities and products (e.g., materials developed and disseminated, workshop or training registration fees), as long as all income derived from such activities and products is added to funds committed to the grant and its activities. Specifically, this program income (gross income earned by the grantee, during the funding period, as a direct result of the grant award or its activities) must be used for purposes that further eligible program objectives (e.g., obtaining equipment or other assets required for the program). Program income may not be used to support or further a grantee's general organization, its programs or its services.

Consultative Services. Applicants who offer consultative services for a fee to assist covered entities in complying with their ADA responsibilities or who provide legal representation services for free or for a fee to, or on behalf of, persons with disabilities should include a statement briefly describing the services provided.

Alternate Formats (Print and Audiovisual). All materials produced in standard print must also be produced in large print, in Braille, and on audiotape in proportion to anticipated demand by persons with vision impairments in the targeted population(s). Audiotapes of lengthy materials must be voice- or tone-indexed.

All copies of any videotapes produced must either be open-captioned or closed-captioned for persons with hearing impairments. If videotapes contain significant visual action, some of the closed-captioned tapes must be audio-described for persons with vision impairments.

Effective Communication and Accessibility Requirements. If applicants propose to charge a fee for the materials they produce and disseminate, they must charge the same fee for alternate formats as for standard formats.

Applicants who plan to list a voice telephone number on correspondence or promotional materials concerning the grant activities, or on materials produced under the grant, must also list a TTY telephone number. Applicants who do not have a TTY may include the cost of purchasing one in the proposed project budget.

Applicants who plan to use an automated telephone information system to respond to voice calls concerning grant activities must provide comparable service for TTY users. The cost of establishing an automated TTY information system may not be included in the proposed project budget.

All grant activities must be held in accessible facilities and must be available in formats accessible to individuals with communication disabilities.

Materials to be Provided to DOJ. One thousand standard print copies, 100 audiotape copies, 100 large print copies, and 50 Braille copies of each publication produced under the grant must be provided to DOJ.

One one-inch NCSC standard fully mixed and open-captioned edited master videotape, 25 other copies, and, where appropriate, 15 audiodescribed copies of each videotape produced under the grant must be provided to DOJ for use by the Federal government.

A copy of the final text of each document or videotape script produced must be provided to DOJ on computer disk in ASCII or Wordperfect.

Funds for the reproduction of the above materials should be included in the proposed grant budget.

Application Requirements

Under Section 506(d) of the Americans with Disabilities Act, the

Department is authorized to award grants to individuals and non-profit organizations to supplement its technical assistance efforts. All applicants must submit, in the order given, an original and two copies of the following information.

1. A signed SF 424 and SF 424A (Rev. 4/88) application form.

2. A one-page Abstract that summarizes the goals of the project, the nature and size of the population(s) to be reached through the project, and the project strategy; Applicants should state explicitly the number of people expected to be served in the course of the project's activities. Depending on the nature of the project, this may be indicated by the number of copies of print materials to be developed and disseminated, the number of people expected to be trained, the number of people expected to view audiovisual materials, or other appropriate indicators of the scale of the project.

3. A Project Strategy and Plan of Action (maximum length 15 pages) that:

—Addresses each major component identified in the grant priorities specific to the project for which applicant is applying;

—Describes all major activities, events, and/or products that are planned;

—Provides a detailed plan for evaluating the effectiveness of the project, and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience; and

—Provides a description of the applicant's plan for coordinating project activities with other Federal ADA programs and their grantees.

4. A Management Plan that includes a timeline for completion of all project objectives, activities, events, and products.

5. A Budget Narrative required by the SF 424 (Rev. 4/88), which includes the basis for all costs presented in the budget.

6. A brief statement identifying the facilities, equipment, and other resources available for carrying out the project.

7. Job descriptions for positions that are proposed to be funded under the grant.

8. Resumes or qualifications of the key individuals who will fill the grant positions, including consultants, if any (maximum length 3 pages each).

9. Letters of commitment from organizations that will be involved in the project, if any.

10. A certification regarding lobbying, debarment, suspension, other responsibility matters, and drug-free workplace requirements, OJP Form 4061/6.

11. A disclosure of lobbying activities, SF LLL.

(Please Note: Non-profit applicants who have not previously received Federal financial assistance from the Department of Justice may also be required to submit a disclosure of financial capability statement or other documentation prior to the grant award)

Dated: May 25, 1994.

Deval L. Patrick,

Assistant Attorney General, Civil Rights Division.

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National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure; Notice of Open Meeting

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure; Notice of Open Meeting

AGENCY: National Telecommunications and Information Administration (NTIA).

ACTION: Notice is hereby given of a meeting of the United States Advisory Council on the National Information Infrastructure, created pursuant to Executive Order 12864, as amended.

SUMMARY: The President established the Advisory Council on the National Information Infrastructure (NII) to advise the Secretary of Commerce on matters related to the development of the NII. In addition, the Council shall advise the Secretary on a national strategy for promoting the development of a NII. The NII will result from the integration of hardware, software, and skills that will make it easy and affordable to connect people, through the use of communication and information technology, with each other and with a vast array of services and information resources. Within the Department of Commerce, the National Telecommunications and Information Administration has been designated to provide secretariat services for the Council.

AUTHORITY: Executive Order 12864, signed by President Clinton on September 15, 1993, and amended on December 30, 1993.

DATES: The meeting will be held on Monday, June 20, 1994, from 8:30 a.m. until 4:30 p.m.

ADDRESSES: The meeting will take place at the Weyerhaeuser Auditorium in the Landmark Center, 75 West 5th Street, St. Paul, Minnesota 55102.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Maloney (or Ms. Alison Andrews, alternate), Designated Federal Officer for the Advisory Council on the NII and Chief, Policy Coordination Division at the National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce, room 4892; 14th Street and Constitution Avenue, NW.; Washington, DC 20230. Telephone: 202–482–1835; Fax: 202–482–0979; E-mail: nii@ntia.doc.gov.

SUPPLEMENTARY INFORMATION: Future meetings of the Advisory Council on the National Information Infrastructure are planned on: September 13, 1994, October 19, 1994, December 6, 1994, January 26, 1995, February 22, 1995, April 12, 1995, June 14, 1995, August 16, 1995, October 11, 1995, December 13, 1995.

AGENDA:

1. *Opening Remarks by the Co-Chairs (Delano Lewis, Ed McCracken)*
2. *Meetings of Three Mega-Projects (separate rooms)*
   Members assigned to each of the three projects will meet together. The projects are:
   Vision and Goals Driven by Specific Applications
   Access to the NII
   Privacy, Security, and Intellectual Property
3. *Reports and Discussion on Mega-Projects*
4. *Intellectual Property Report and Discussion*
5. *Council Discussion*
6. *Application Demonstrations*
7. *Public Questions and Answers*
8. *Adjourn.*

PUBLIC PARTICIPATION: The Council meeting, including the individual Mega-Project meetings, will be open to the public, with limited seating available on a first-come, first-served basis. Any member of the public requiring special services, such as sign language interpretation, should contact Alison Andrews at 202–482–1835.

Any member of the public may submit written comments concerning the Council's affairs at any time before or after the meeting. Comments should be submitted through electronic mail to nii@ntia.doc.gov, info@niiac.org, or to the Designated Federal Officer at the address listed above.

Within thirty (30) days following the meeting, copies of the minutes of the Council meetings may be obtained through the NTIA Gopher/Bulletin Board System over the Internet at iitf.doc.gov, at 202–501–1920 or 202–482–1199, or from the U.S. Department of Commerce, National Telecommunications and Information Administration, room 4892, 14th Street and Constitution Avenue NW.; Washington, DC 20230; Telephone 202–482–1835.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 94–13620 Filed 6–1–94; 8:45 am]

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federal register

Friday
June 3, 1994

Part VIII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 341

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 89P–0040]

RIN 0905–AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph for OTC Antitussive Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the final monograph for over-the-counter (OTC) antitussive drug products to include the ingredients diphenhydramine citrate and diphenhydramine hydrochloride. OTC antitussive drug products are used to relieve cough. This final rule addresses only single-ingredient antitussive drug products containing one of these ingredients. In a future issue of the Federal Register, the agency will propose to amend the tentative final monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products to address combination cough-cold drug products containing diphenhydramine citrate or diphenhydramine hydrochloride. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of August 12, 1987 (52 FR 30042), FDA issued a final monograph for OTC antitussive drug products in part 341 (21 CFR part 341) that lists in § 341.14 (21 CFR 341.14) the active ingredients that are generally recognized as safe and effective for use in these products. Diphenhydramine citrate and diphenhydramine hydrochloride were not included in § 341.14 at that time. Subsequently, two manufacturers petitioned the agency to amend the final monograph for OTC antitussive drug products to include diphenhydramine citrate and diphenhydramine hydrochloride as monograph active ingredients (Refs. 1 and 2). The petitions are on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

In the Federal Register of December 9, 1992 (57 FR 58378), the agency discussed these petitions and proposed that diphenhydramine citrate and diphenhydramine hydrochloride be generally recognized as safe and effective for OTC antitussive use. The agency previously determined that diphenhydramine citrate is bioequivalent and therapeutically equivalent to diphenhydramine hydrochloride (54 FR 6814 at 6824, February 14, 1989). The agency proposed specific warnings and directions for these ingredients for OTC antitussive use. The agency advised in its proposed rule (57 FR 58378 at 58380) that any final rule resulting from this proposed rule would be effective 12 months after the final rule's date of publication in the Federal Register.

The agency invited written comments by February 8, 1993, on the proposed rule and the agency's economic impact determination for the proposal. In response to the proposed rule, the agency received two comments from manufacturers. Copies of the comments are on public display in the Dockets Management Branch (address above).

References

(1) Comment No. CP2, Docket No. 89P–0040, Dockets Management Branch.

(2) Comment No. CP3, Docket No. 89P–0040, Dockets Management Branch.

II. The Agency's Conclusions on the Comments

1. Two comments requested that the agency's proposed OTC antitussive dosage for diphenhydramine hydrochloride (25 milligrams (mg) every 4 hours (h), not to exceed 150 mg in 24 h) be expanded to a range of 25 to 50 mg every 4 to 6 h, not to exceed 300 mg in 24 h. One of the comments also requested a corresponding expansion of the OTC antitussive dosage for diphenhydramine citrate, i.e., a dosage of 38 to 76 mg every 4 to 6 h, not to exceed 456 mg in 24 h.

To support an expanded dosage range for antitussive use, one of the comments provided pharmacokinetic data for diphenhydramine hydrochloride dosed at 25 mg every 4 h and 50 mg every 6 h. The data included the following steady state concentrations (C_{ss}), minimum concentrations at steady state ($C_{ss\ min}$), and maximum concentrations at steady state ($C_{ss\ max}$) in nanograms/milliliter (ng/mL) for both dosages; and the areas under the curve (AUC) for both dosages in ng x h/mL:

Diphenhydramine Hydrochloride Pharmacokinetic Data

	($C_{ss\ max}$)	($C_{ss\ min}$)	(C_{ss})	(AUC)
25 mg every 4 h	55 ng/mL	27.5 ng/mL	40 ng/mL	160 ng x h/mL
50 mg every 6 h	85 ng/mL	30 ng/mL	52 ng/mL	312 ng x h/mL

The comment pointed out that the two $C_{ss\ min}$ concentrations are comparable. The comment stated that the 50 mg every 6 h dosing regimen is as efficacious as the 25 mg every 4 h regimen because the 50 mg dose does not fall below the minimum effective concentration. The comment added that further substantiation is provided by the C_{ss} and AUC data, which fall within the minimum effective concentration levels.

The other comment stated that the potential for conflict between the different dosages for antitussive and antihistamine use of diphenhydramine would be eliminated by accepting the broader antihistamine dosage (e.g., for diphenhydramine hydrochloride, 25 to 50 mg every 4 to 6 h, not to exceed 300 mg in 24 h) for products intended for both uses. The comment added that this approach would reduce the potential for consumer confusion. The comment argued that it would not be in the consumer's interest to establish a lower dose for diphenhydramine in products that will not meet consumer expectations of the antihistamine effect. The comment contended that, based on the established safety of diphenhydramine citrate and diphenhydramine hydrochloride for both antitussive and antihistamine use, monograph status for four uses, and potential use for more than one

indication in a cough-cold product, the broader dosage range (e.g., for diphenhydramine hydrochloride, 25 to 50 mg every 4 to 6 h) should be permitted to provide maximum effectiveness. Both comments concluded that diphenhydramine hydrochloride has been found safe for a variety of OTC uses at dosages of 25 to 50 mg every 4 to 6 h and, thus, safety is not an issue at this dosage range.

In the **Federal Register** of September 9, 1976 (41 FR 38312 at 38341), the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products based its 25 mg every 4 h recommendation for diphenhydramine hydrochloride for antitussive use on data demonstrating effectiveness and acceptable tolerability at this dosage. All approved applications for diphenhydramine hydrochloride as an OTC antitussive are for a dosage of 25 mg every 4 h, based on supporting clinical data. No clinical data have been received by the agency to support the safety or increased effectiveness of higher dosages of diphenhydramine hydrochloride or diphenhydramine citrate for OTC antitussive use either under the OTC drug review or an approved application. One comment submitted pharmacokinetic data concerning diphenhydramine at both the 25 mg every 4 h dose and the 50 mg every 6 h dose showing that C_{ss} min for both regimens were similar. It is therefore likely that dosing at 50 mg every 6 h is effective. That regimen, however, produces higher $C_{ss\ max}$ and almost twice the drug exposure, with increased potential adverse effects such as sedation, but with no evidence of greater effectiveness than the every 4 h regimen. In conclusion, the agency cannot consider to be generally recognized as safe and effective an antitussive dosage (25 to 50 mg every 4 to 6 h for diphenhydramine hydrochloride) that is not supported by clinical data. Therefore, based on the Panel's recommended dosage and the approved application labeling for OTC antitussive drug products containing diphenhydramine hydrochloride, the agency is establishing the monograph antitussive dosage of diphenhydramine hydrochloride as follows:

Adults and children 12 years of age and over: oral dosage is 25 milligrams every 4 hours, not to exceed 150 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 12.5 milligrams every 4 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

The monograph antitussive dosage of diphenhydramine citrate is as follows:

Adults and children 12 years of age and over: oral dosage is 38 milligrams every 4 hours, not to exceed 228 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 19 milligrams every 4 hours, not to exceed 114 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

With respect to the comment's discussion of a single ingredient drug product containing diphenhydramine for concurrent use as both an antihistamine and an antitussive, this issue will be addressed in an amendment to the OTC cough-cold combinations tentative final monograph in a future issue of the **Federal Register**.

2. One comment discussed "multiuse" labeling of OTC drug products that contain diphenhydramine. The comment described this as labeling a product with some or all of the proven pharmacologic activities of the drug whether or not the conditions to be treated are related. As an example, the comment stated that a product containing diphenhydramine could be labeled for both antitussive and antihistamine use. If this occurred, the statement of identity could be expressed as "cough suppressant/antihistamine." The comment stated that the product's labeling could describe each use separately under the product's "Indications," with accompanying warnings and directions for both uses. The comment contended that there is no legal restriction that prevents "multiuse" labeling whether or not the conditions to be treated are related. The comment discussed several aspects of "multiuse" labeling.

This final rule addresses only single-ingredient diphenhydramine citrate and diphenhydramine hydrochloride drug products for antitussive use. The agency acknowledges that "multiuse" labeling is possible for products containing diphenhydramine but is not aware of any such products having been or currently being in the marketplace. The agency intends to address "multiuse" labeling in a future issue of the **Federal Register** in an amendment to the tentative final monograph for OTC cough-cold combination drug products. The agency will discuss: (1) Concurrent use of diphenhydramine as an antitussive and as an antihistamine for concurrent symptoms, and (2) different uses of diphenhydramine with separate full labeling for different, nonconcurrent symptoms. Manufacturers may not introduce diphenhydramine products having "multiuse" labeling into the OTC marketplace until the agency's proposal on how this should be done appears in a future issue of the **Federal Register**.

3. One comment contended that an agency statement in the proposed rule appeared to be inconsistent with the agency's general provisions and administrative procedures for marketing OTC combination drug products under 21 CFR 330.13(b)(2) and Compliance Policy Guide 7132b.16. The agency statement said: "Until the agency amends the tentative final monograph for OTC cough-cold combination drug products, no cough-cold combination drug product containing diphenhydramine citrate or diphenhydramine hydrochloride labeled for antitussive use can be marketed OTC unless it is the subject of an approved NDA or ANDA" (57 FR 58378 at 58380). The comment stated that, because FDA recognizes diphenhydramine as both an OTC antihistamine and an OTC antitussive, marketing of diphenhydramine for both claims in combination drug products should be allowed under the provisions of the tentative final monograph for OTC cough-cold combination drug products. The comment listed a number of examples where an antitussive can be combined with an antihistamine and stated that diphenhydramine should be able to perform both functions in the product. The comment contended that this approach should be acceptable provided that all of the labeled uses are for Category I combinations.

This final rule does not address combination drug products containing diphenhydramine citrate or diphenhydramine hydrochloride as an antitussive active ingredient. There are a number of issues that need to be resolved before diphenhydramine can be used to perform both functions (antitussive and antihistamine) in a single product. These include, among others, a difference in the monograph directions for use (amount of drug to be taken and time interval for taking the drug) and different warnings related to the individual uses. The agency intends to discuss these matters in a future issue of the **Federal Register**, as noted above. At this time, the agency reaffirms its position stated above that any OTC cough-cold combination drug product containing diphenhydramine citrate or diphenhydramine hydrochloride labeled for antitussive use can only be marketed if it is the subject of an approved application.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking. FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs

agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Currently marketed OTC single ingredient diphenhydramine drug products already meet the conditions of the final monograph. Other manufacturers will be able to enter the OTC marketplace without having to obtain an approved application. Accordingly, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 341

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 341 is amended as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 341.14 is amended by adding new paragraphs (a)(5) and (a)(6) to read as follows:

§ 341.14 Antitussive active ingredients.

* * * * *

(a) * * *

(5) Diphenhydramine citrate.

(6) Diphenhydramine hydrochloride.

* * * * *

3. Section 341.74 is amended by adding new paragraphs (c)(4)(vii), (c)(4)(viii), (c)(4)(ix), (d)(1)(iv), and (d)(1)(v) to read as follows:

§ 341.74 Labeling of antitussive drug products.

* * * * *

(c) * * *

(4) * * *

(vii) *For products containing diphenhydramine citrate or diphenhydramine hydrochloride identified in § 341.14(a)(5) and (a)(6).* "May cause excitability especially in children."

(viii) *For products containing diphenhydramine citrate or diphenhydramine hydrochloride identified in § 341.14(a)(5) and (a)(6) when labeled only for children under 12 years of age*—(A) "Do not give this product to children who have a breathing problem such as chronic bronchitis, or who have glaucoma, without first consulting the child's doctor."

(B) "May cause marked drowsiness. Sedatives and tranquilizers may increase the drowsiness effect. Do not give this product to children who are taking sedatives or tranquilizers, without first consulting the child's doctor."

(ix) *For products containing diphenhydramine citrate or diphenhydramine hydrochloride identified in § 341.14(a)(5) and (a)(6) when labeled for use in adults and children under 12 years of age*—(A) "Do not take this product, unless directed by a doctor, if you have a breathing problem such as emphysema or chronic bronchitis, or if you have glaucoma or difficulty in urination due to enlargement of the prostate gland."

(B) "May cause marked drowsiness; alcohol, sedatives, and tranquilizers may increase the drowsiness effect. Avoid alcoholic beverages while taking this product. Do not take this product if you are taking sedatives or tranquilizers, without first consulting your doctor. Use caution when driving a motor vehicle or operating machinery."

* * * * *

(d) * * *

(1) * * *

(iv) *For products containing diphenhydramine citrate identified in § 341.14(a)(5).* "Adults and children 12 years of age and over: oral dosage is 38 milligrams every 4 hours, not to exceed 228 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 19 milligrams every 4 hours, not to exceed 114 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor."

(v) *For products containing diphenhydramine hydrochloride identified in § 341.14(a)(6).* "Adults and children 12 years of age and over: oral dosage is 25 milligrams every 4 hours, not to exceed 150 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 12.5 milligrams every 4 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor."

* * * * *

4. Section 341.90 is amended by adding new paragraphs (r) and (s) to read as follows:

§ 341.90 Professional labeling.

* * * * *

(r) *For products containing diphenhydramine citrate identified in § 341.14(a)(5).* "Children 2 to under 6 years of age: oral dosage is 9.5 milligrams every 4 hours, not to exceed 57 milligrams in 24 hours."

(s) *For products containing diphenhydramine hydrochloride identified in § 341.14(a)(6).* "Children 2 to under 6 years of age: oral dosage is 6.25 milligrams every 4 hours, not to exceed 37.5 milligrams in 24 hours."

Dated: May 16, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–13586 Filed 6–2–94; 8:45 am]

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federal register

Friday
June 3, 1994

Part IX

Department of Commerce

International Trade Administration

Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order and Correction; Notices

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–806]

Steel Wire Rope from Mexico; Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order

AGENCY: Import Administration/ International Trade Administration/ Department of Commerce.

ACTION: Notice of affirmative preliminary determination of circumvention of antidumping duty order.

SUMMARY: On May 26, 1993, the Department of Commerce received an allegation of circumvention of the antidumping duty order on steel wire rope from Mexico. Pursuant to that allegation, the Department of Commerce initiated a circumvention inquiry on September 17, 1993, which was published in the **Federal Register** on September 27, 1993 (58 FR 50349).

The Department of Commerce has conducted that inquiry and preliminarily determines that imports into the United States of steel wire strand from Mexico, which are assembled in the United States into steel wire rope for sale in the United States, are circumventing the antidumping duty order on steel wire rope from Mexico within the meaning of section 781(a) of the Tariff Act of 1930, as amended, and 19 CFR 353.29(e). Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Sandra Yacura or Thomas Prosser at (202) 482–5253, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1993, the Department of Commerce (the Department) received a petition filed by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (the Committee) requesting an investigation to determine whether imports of steel wire strand (also known as stranded wire or strand) are circumventing the antidumping duty order on steel wire rope from Mexico (58 FR 16173, March 25, 1993) within the meaning of section 781(a) of the Tariff Act of 1930, as amended (the Tariff Act). Subsequent submissions from the Committee, addressing deficiencies in the original request, were received on August 13, August 18, and August 20, 1993. On April 11, 1994, the Committee submitted copies of the Census Bureau data that it had summarized in earlier submissions. On September 27, 1993, the Department published in the **Federal Register** a Notice of Initiation of Anticircumvention Inquiry; Steel Wire Rope from Mexico (58 FR 50349). The inquiry covers the period from October 1, 1992 to September 30, 1993.

On November 19, 1993, the Department issued a questionnaire to Grupo Camesa S.A. de C.V. (Grupo Camesa) and its United States affiliate, Camesa Inc. (collectively, Camesa). Camesa responded to the questionnaire on December 20, 1993. The Department determined that this submission was deficient and issued a supplemental questionnaire on January 31, 1994. The Department received a response to the supplemental questionnaire on February 16, 1994. On March 15, 1994, the Committee submitted comments with respect to Camesa's responses.

Scope of Antidumping Duty Order

The product covered by the order is steel wire rope, which is defined in the Department's antidumping duty order on steel wire rope from Mexico as: "ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of plated wire."

During the period of this inquiry (POI), such merchandise was classifiable under subheadings 7312.10.9030, 7312.10.9060, and 7312.10.9090 of the Harmonized Tariff Schedule (HTS). HTS subheadings are provided for convenience and for Customs purposes. The Department's written description of the scope of the order remains dispositive.

Scope of the Anticircumvention Inquiry

Products subject to the circumvention inquiry are entries of strand, which are defined as stranded wire having a lay or twist of not more than 1 revolution for a length equal to the strand diameter multiplied by 8.5. During the POI, such merchandise was classifiable under subheading 7312.10.3020 of the HTS. The HTS subheading is provided for convenience and for Customs purposes. The Department's written description of the scope of the inquiry remains dispositive.

Nature of the Circumvention Inquiry

Section 781(a)(1) of the Tariff Act provides that if:

(A) A product sold in the United States is of the same class or kind as merchandise that is the subject of an order, and

(B) Such product sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order applies, and

(C) The difference between the value of such product sold in the United States and the value of the imported parts and components referred to in (B) above is small, the Department, after taking into account any advice provided by the U.S. International Trade Commission (ITC), may include within the scope of such order the imported parts or components referred to in paragraph (B) above that are used in the completion or assembly of the merchandise in the United States at any time such order is in effect. Section 781(a)(2) of the Tariff Act further provides that, in determining whether to include parts or components in an antidumping duty order, the Department shall take into account such factors as (A) pattern of trade; (B) whether the manufacturer or exporter of the parts or components is related to the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order applies, and (C) whether imports into the United States of the parts or components produced in such foreign country have increased after the issuance of such order.

I. Statutory Criteria

(A) Class or Kind of Merchandise

In this inquiry, the merchandise completed at Camesa Inc.'s Rosenberg, Texas, facility and sold in the United States is steel wire rope. As the antidumping duty order encompasses "ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of plated wire," the steel wire rope sold in the United States is of the same class or kind of merchandise as that subject to the antidumping duty order on steel wire rope from Mexico.

(B) Parts/Components Produced in the Country to Which the Order Applies

The component of wire rope being imported is defined as stranded wire having a lay or twist of not more than 1 revolution for a length equal to the strand diameter multiplied by 8.5. This strand is produced by Grupo Camesa in Mexico, imported into the United States for closure into steel wire rope at the

Camesa Inc. facility at Rosenberg, Texas, and subsequently sold in the United States by Camesa Inc.

(C) Difference in Value

In this anticircumvention inquiry, we attempted to base our analysis of the difference in value on both a quantitative analysis of the value of the finishing process in the United States, and a qualitative analysis of the nature of the processing performed in the United States. This approach is consistent with our analysis in previous anti-circumvention inquiries. See, e.g., Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China; Affirmative Final Determination of Circumvention of Antidumping Duty Order, 59 FR 15155 (March 31, 1994).

Generally, in an anticircumvention inquiry, a quantitative analysis is based on a comparison of the value between the finished product sold in the United States and the value of the component imported from the country to which the order applies. See, e.g., Granular Polytetrafluoroethylene Resin from Italy, Preliminary Affirmative Determination of Circumvention of Antidumping Duty Order, 57 FR 43218 (September 18, 1992). However, in order to make an effective comparison, the Department must ascertain that it is using the appropriate value for the imported component. To that end, we provided the respondent with three options for demonstrating that the price of the wire strand imported by Camesa Inc. from Grupo Camesa represented a valid market price for use in our difference-in-value calculation. The options were as follows: (1) Sales prices for strand sold to unrelated parties in the home market and largest third country market; (2) purchase prices paid to unrelated suppliers in Mexico by Grupo Camesa for strand; or (3) monthly weighted-average manufacturing costs for strand sold to Camesa Inc. during the POI. In order for us to ascertain the value of the completed merchandise sold in the United States, we also requested that Camesa provide cost data relevant to the production of steel wire rope in the United States.

Camesa, however, failed to provide any of the requested information. Instead, Camesa provided a single price quotation from a supplier in a third country. Camesa's failure to provide the requested information prevented the Department from determining whether the difference between the value of the steel wire rope sold in the United States and the value of the strand produced in Mexico is small. Accordingly, the Department is required to rely on the best information available (BIA), pursuant to section 776(c) of the Tariff Act, to make the determination.

In deciding what to use as BIA, the Department's regulations at 19 CFR 353.37(b) state that the Department may take into account whether a party refuses to provide requested information. Thus, the Department may determine, on a case-by-case basis, what constitutes BIA.

Because Camesa refused to provide the requested information, as BIA, we preliminarily determine that the quantitative difference between the value of the finished steel wire rope sold in the United States and the value of the strand produced in Mexico is small. This eliminates the need for the Department's qualitative analysis of the nature of the processing Camesa Inc. performed in the United States. However, we note that the result of a qualitative analysis supports the BIA assumption that the difference between the value of the imported strand and the value of the finished rope is small, as discussed below.

According to the description of the manufacturing process provided by the ITC in its final affirmative determination of injury (as discussed in the following paragraphs) concerning imports of steel wire rope from Argentina and Mexico (see Steel Wire Rope from Argentina and Mexico, Determinations of the Commission in Investigations Nos. 731–TA–457 and 479 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations, August 1991, pages A17–A21), the manufacturing process for steel wire rope consists of three major steps: (1) Drawing rod into wire, (2) stranding wire, and (3) closing strands into rope. Camesa Inc. performs only the closing process in the United States.

In the first step, steel wire rod is heat treated (called patenting), coated, cleaned, and reduced to a smaller diameter through a series of dies to wire. Depending on the amount of reduction during drawing (called the draft), the wire may also undergo patenting and re-drawing to a smaller diameter.

In the second step, strands are formed in a single operation from individual wires laid about a core so that all wires in a strand can move in unison to distribute load and bending stresses equally. This is achieved with "tubular" or "planetary" stranding machines. Strand used for making wire rope is generally lubricated as the wires move into the stranding die. After emerging from the stranding die, the strand is frequently "postformed," a process that involves passing the strand through a series of straightening rollers in order to remove excessive twist. The strand may be die-formed or flattened, or coated at this point.

The third step, the finishing operation, is called "closing" and is accomplished on a tubular or planetary closer, operating in a manner similar to tubular or planetary stranders. Spools or bobbins of strand are placed in cradles in the closer to dispense simultaneously all strands of a sufficient length needed to make a single rope without a splice. The closing die presses the strands together, forming the rope.

Based on the above description of the manufacturing process for steel wire rope, we preliminarily determine that the finishing operation performed by Camesa Inc. in the United States represents a minor portion of the manufacturing process of steel wire rope, and adds minor value when compared to the production of the wire strand, as alleged by the petitioner in its anticircumvention inquiry request.

The Department has determined, based on BIA, that the quantitative difference between the value of the steel wire rope sold in the United States and the value of the wire strand produced in Mexico is small. Though not necessary for this conclusion, the Department further notes that a qualitative analysis of the manufacturing process for steel wire rope demonstrates that the finishing operation performed by Camesa Inc. represents a minor portion of the manufacturing process of steel wire rope. Therefore, we preliminarily determine that the difference between the value of the strand produced in Mexico and the value of the wire rope sold in the United States is small within the meaning of section 781(a) of the Tariff Act.

II. Factors

In accordance with section 781(a)(2) of the Tariff Act, the Department considered the following factors in determining whether to include strand within the order: (A) The pattern of trade, (B) whether the manufacturer or exporter of the parts or components is related to the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order applies, and (C) whether imports into the United States of the parts or components produced in such foreign country have increased after the issuance of such order.

(A) Pattern of Trade

Generally, the Department considers circumvention to be more likely when

the imports of the merchandise subject to the order have decreased. To evaluate the pattern of trade in this case, we examined the timing and quantities of exports of steel wire rope from Mexico to the United States during the POI. We also examined the timing and quantities of Camesa's imports into the United States of steel wire rope produced by Grupo Camesa in Mexico.

U.S. Census Bureau (Census Bureau) statistics indicate that, during the nine months prior to the POI, steel wire rope imports from Mexico to the United States averaged 316.44 net tons per month. However, during the first half of the POI, imports of steel wire rope from Mexico dropped to an average of ten net tons per month. Census Bureau statistics for the second half of the POI were not available.

Although Camesa imported steel wire rope from Mexico to the United States prior to the POI, Camesa had no such imports of steel wire rope during the POI. Thus, the pattern of trade of imports of merchandise subject to the order indicates that circumvention may have occurred during the POI.

(B) Relationship

Generally, the Department considers circumvention to be more likely when the manufacturer/exporter of the parts or components is related to the party completing or assembling merchandise in the United States using such imported parts or components. See, e.g., Granular Polytetrafluoroethylene Resin from Italy, Final Affirmative Determination of Circumvention of Antidumping Duty Order, 58 FR 26100 (April 30, 1993).

Camesa Inc., which imports the strand at issue and finishes it into steel wire rope in the United States, is a wholly-owned subsidiary of Grupo Camesa, the Mexican manufacturer and exporter of the strand (see Camesa submission of December 20, 1993, page one). Since all of Camesa Inc.'s purchases of strand during the POI were from Grupo Camesa, these purchases are from a related party within the meaning of section 773(e)(4) of the Tariff Act. Accordingly, the relationship between Grupo Camesa and Camesa Inc. would make it more likely that circumvention of the antidumping duty order may have occurred during the POI.

(C) Increase in Imports of Components

Generally, the Department considers circumvention to be more likely when imports of parts and components which are used in the production of merchandise subject to the order have increased after issuance of the antidumping duty order. The Department reviewed Camesa's imports of strand after the issuance of the order, and compared these imports to those prior to the order.

We note that Camesa's imports steadily increased after issuance of the order through the end of the POI (see Camesa submission of December 20, 1993, Attachment Five). This pattern of imports of strand from Mexico indicates that circumvention of the order on steel wire rope may have occurred during the POI.

Affirmative Preliminary Determination of Circumvention

After consideration of all the factors discussed above, the Department preliminarily determines that circumvention of the antidumping duty order on steel wire rope from Mexico has occurred within the meaning of section 781(a) of the Tariff Act.

We base this determination on the following: First, the merchandise finished at Camesa Inc. and sold in the United States is of the same class or kind of merchandise as that covered by the order and is completed from merchandise produced in the order country. Second, on the basis of BIA, the Department preliminarily determines that the difference between the value of the steel wire rope sold in the United States and the value of the strand used in the production of steel wire rope is small within the meaning of section 781(a) of the Tariff Act. Third, Camesa's imports into the United States of strand from Mexico increased during the POI, while Camesa's imports into the United States of wire rope from Mexico ceased after the Department issued the affirmative preliminary determination of sales at less than fair value of steel wire rope from Mexico. Finally, Camesa Inc. is a wholly-owned subsidiary of Grupo Camesa. Thus, the pattern of trade, relationship between Grupo Camesa and Camesa Inc., and level of imports into the United States support a finding of circumvention of the antidumping duty order.

Based on this affirmative preliminary determination of circumvention, we have preliminarily determined that strand, as defined above, falls within the scope of the antidumping duty order on steel wire rope from Mexico, pursuant to section 781(a)(1) of the Tariff Act.

Suspension of Liquidation

In accordance with section 773(d) of Tariff Act, the Department is directing the U.S. Customs Service to suspend liquidation of all entries of stranded wire from Mexico having a lay or twist of not more than 1 revolution for a length equal to the strand diameter multiplied by 8.5, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

The merchandise subject to suspension of liquidation is wire strand of the kind used in the production of steel wire rope, as defined in the "Scope of the Anticircumvention Inquiry" section of this notice. The U.S. Customs Service shall require a cash deposit or posting of bond in the amount of 111.68 percent. This suspension of liquidation will remain in effect until further notice.

Notification of the International Trade Commission

The Department, consistent with section 781(e) of the Tariff Act, will notify the ITC of this preliminary determination to include the merchandise subject to this inquiry within the antidumping duty order on steel wire rope from Mexico. Pursuant to section 781(e) of the Tariff Act, the ITC may request consultations concerning the Department's proposed inclusion of the subject merchandise. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, the ITC may provide written advice to the Department. In such a case, the ITC will have 60 days to provide written advice to the Department.

Public Comment

Interested parties may request disclosure within 5 days of the date of publication of this determination, and may request a hearing within 10 days of publication. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to comments, limited to issues raised in those briefs or comments, may be filed no later than 37 days after publication of this notice. Any hearing, if requested, will be held 44 days after publication of this notice. The Department will publish the final determination with respect to the circumvention inquiry, including the results of its analysis of any written comments.

This preliminary affirmative circumvention determination is in accordance with section 781(a) of the Tariff Act and 19 CFR 353.29(e).

Dated: May 19, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–12798 Filed 5–24–94; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-806]

Steel Wire Rope From Mexico; Correction to Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order

AGENCY: Import Administration/ International Trade Administration/ Department of Commerce.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Sandra Yacura or Thomas Prosser at (202) 482-5253, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

CORRECTION: In the notice of affirmative preliminary determination of circumvention of the antidumping duty order on steel wire rope from Mexico published elsewhere in this issue of the **Federal Register**, the Department of Commerce (the Department) incorrectly stated under the "Suspension of Liquidation" section that:

The U.S. Customs Service shall require a cash deposit or bond posted thereof in the amount of 111.68 percent.

In accordance with 19 CFR 353.29(i), in the event of an affirmative preliminary determination under section 353.29, the Department will instruct the Customs Service to require a cash deposit. There is no provision for the posting of bonds. Therefore, the sentence should not have included the phrase "or bond posted thereof." The correct sentence should read as follows:

The U.S. Customs Service shall require a cash deposit in the amount of 111.68 percent.

This notice is published pursuant to section 781(a) of the Tariff Act and 19 CFR 353.29(e).

Dated: May 27, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-13569 Filed 6-2-94; 8:45 am]

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