NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

APR 15 1987

Office of General Counsel

John O. Noel, Esq.
Senior Counsel
New York State Urban Development Corporation
1515 Broadway
New York, NY 10036-8960

Dear Mr. Noel:

This is in reference to your letter concerning Urban Development Corporation ("UDC") deposits in Federal credit unions ("FCU's"). I apologize for the delay in our response.

Our understanding of your proposed program is as follows. UDC will select five FCU's that primarily serve low-income communities. UDC will deposit $50,000 in each FCU if the FCU agrees to use the $50,000 to make certain types of loans that meet UDC's criteria. The FCU's will also agree to pay UDC two percent interest on its deposits and to charge an interest rate of no higher than seven percent on the loans it makes with UDC deposits.

This proposed program raises several issues under the FCU Act and the National Credit Union Administration (NCUA) Rules and Regulations. You posed four specific questions in your letter. Your questions and our answers thereto follow.

1. "As set forth herein, must UDC be a member of the designated credit unions?"

In general, an FCU can only accept deposits from its members. However, there are two exceptions to this rule that may apply in your situation.

First, FCU's that are designated by NCUA as serving predominantly low income members pursuant to Sections 700.1(h) and (i) of the NCUA Rules and Regulations (12 C.F.R. §§700.1(h) and (i)) may accept nonmember shares. These shares are insured as member shares (see Section 101(5) of the FCU Act (12 U.S.C. §1752(5) defining member account to include shares of nonmembers in low income FCU's and Section 201(a) of the FCU Act (12 U.S.C. §1781(a) stating that member accounts are insured).

FOIA file: Vol I, C.5 - Special Loan Plans

You stated that the FCU's expected to participate in your proposed program will primarily serve low income communities in New York. You will need to ascertain whether such FCU's have been designated by NCUA as predominantly serving low income members. The NCUA Regional Office in Boston (617/223-6807) has information on all FCU's so designated in New York.

Second, FCU's may accept nonmember shares from public units. These shares are insured up to $100,000 per public unit (see Sections 101(5) and 207(c)(2)(A) of the FCU Act (12 U.S.C. §§1752(5) and 1787(c)(2)(A)). Insurance of public unit accounts is addressed in Section 745.10 of the NCUA Rules and Regulations (12 C.F.R. §745.10) and Section E. of the Appendix to Part 745 (enclosed). If UDC qualifies as a public unit (see Section E. of Appendix), it can have insured non-member accounts in FCU's.

"2. If the answer to question (1) is yes, will UDC qualify to be a member of the credit unions?"

UDC would have to qualify for membership in each FCU in which it wishes to deposit funds (assuming the two exceptions to member deposits discussed above do not apply). If the FCU's charter does not include UDC within its field of membership, its charter would need to be amended. In order to amend its field of membership to add UDC as a member, each New York FCU would have to apply to NCUA's Regional Office in Boston for a change to its charter. Changes to an FCU's field of membership are reviewed pursuant to NCUA guidelines (see Interpretive Ruling and Policy Statement 84-1 and NCUA Publication 8007 - Chartering and Organizing of Federal Credit Unions, enclosed). The NCUA Board has delegated the authority to approve most field of membership amendments to the Regional Directors.

"3. Will UDC funds be completely insured by applicable federal insurance programs?"

If member accounts are properly established at the FCU's, the funds will be insured up to $100,000 per account pursuant to Part 745 of the NCUA Rules and Regulations. Permissible nonmember deposits (by nonmembers in NCUA-designated FCU's serving predominatly low income members and by nonmember public units) will also be insured up to $100,000 per account as provided in Part 745.

"4. Are the credit unions empowered to accept funds to make loans with the restrictions that UDC will want to impose?"

For purposes of clarity, I believe it is necessary to point out that FCU's do not have general trust powers. Therefore, under your proposal, once UDC places its funds into an FCU, the funds become those of the FCU (with a corresponding obligation to pay those funds back to UDC under the terms of the share agreement) to invest, lend, or deposit as the FCU sees fit. It would be permissible for an FCU to agree, as a condition of receiving and maintaining the share account of UDC, that it will use its best efforts to make certain types of loans, consistent with its lending polices, the NCUA Rules and Regulations, the FCU Act, safety and soundness standards, and all other applicable laws. However, the ultimate decision to approve or deny a loan, must be the FCU's.

Additionally, we note that the NCUA Board recently finalized a member business loan rule. It would appear from the limited facts presented to us that the loans to be made by the FCU's will be subject to the limitations and requirements of the rule (Section 701.21(h)).

One further item in your letter warrants discussion. You state that UDC would accept an interest rate of 2% on its deposits in the FCU's provided that the credit unions do not impose an interest rate higher than 5-7% on FCU loans made under the UDC guidelines. FCU's do not pay interest on deposits. Rather, they pay dividends based on their earnings after providing for required reserves (see Sections 116 and 117 of the FCU Act (12 U.S.C. §§1762 & 1763)). FCU's cannot guarantee that a certain dividend rate will be paid on deposits.

I hope that we have been of assistance.

Sincerely,

151

STEVEN R. BISKER
Assistant General Counsel

HMU:sg

Enclosures

Part 745

Clarification and Definition of Account Insurance Coverage and Appendix

§745.0 Scope.

The regulation and appendix contained in this Part describe the insurance coverage of various types of member accounts. In general, all types of member share accounts received by the credit union in its usual course of business, including regular shares, share certificates, and share draft accounts, represent equity and are insured. For the purposes of applying the rules in this Part, it is presumed that the owner of funds in an account is an insured credit union member or otherwise eligible to maintain an insured account in a credit union. These rules do not extend insurance coverage to persons not entitled to maintain an insured account or to account relationships that have not been approved by the Board as an insured account. Where there are multiple owners of a single account, generally only that part which is allocable to the member(s) is insured.

§745.1 Definitions.

(a) The terms "account" or "accounts" as used in this Part mean share, share certificate or share draft accounts (or their equivalent under state law, as determined by the Board in the case of insured state credit unions) of a member (which includes other credit unions, public units and nonmembers where permitted under the Act) in a credit union of a type approved by the Board which evidences money or its equivalent received or held by a credit union in the usual course of business and for which it has given or is obligated to give credit to the account of the member.

(b) The terms "member" or "members" as used in this Part mean those persons enumerated in the credit union's field of membership who have been elected to membership in accordance with the Act or state law in the case of state credit unions. It also includes those nonmembers permitted under the Act to maintain accounts in an insured credit union, including nonmember credit unions and nonmember public units and political subdivisions.

(c) The term "public unit" means the United States, any state of the United States, the District of Colombia, the Commonwealth of Puerto Rico, the Panama Canal Zone, any territory or possession of the United States, any county, municipality, or political subdivision thereof, or any Indian tribe as defined in Section 3(c) of the Indian Financing Act of 1974.

(d) The term "political subdivision" includes any subdivision of a public unit, as defined in (c) above, or any principal department of such public unit, (1) the creation of which subdivision or department has been expressly authorized by state statute, (2) to which some functions of government have been delegated by state statute, and (3) to which funds have been allocated by statute or ordinance for its exclusive use and control. It also includes drainage, irrigation, navigation improvement, levee, sanitary, school or power districts and bridge or port authorities, and other special districts created by state statute or compacts between the states. Excluded from the term are subordinate or nonautonomous divisions, agencies, or boards within principal departments.

§745.2 General Principles Applicable in Determining Insurance of Accounts.

(a) General: This Part provides for determination by the Board of the amount of members' insured accounts. The rules for determining the insurance coverage of accounts maintained by members in the same or different rights and capacities in the same insured credit union are set forth in the following provisions of this Part. The Appendix provides examples of the application of these rules to various factual situations. Insofar as rules of local law enter into such determinations, the law of the jurisdiction in which the insured credit union's principal office is located shall govern.

(b) The regulations in this Part in no way are to be interpreted to authorize any type of account that is not authorized by Federal law or regulation or State law or regulation or by the bylaws of a particular credit union. The purpose is to be as inclusive as possible of all situations.

(c) Records: (1) The account records of the insured credit union shall be conclusive as to the existence of any relationship pursuant to which the funds in the account are deposited and on which a claim for insurance coverage is founded. Examples would be trustee, agent, custodian, or executor. No claim for insurance based on such a relationship will be recognized in the absence of such disclosure.

(2) If the account records of an insured credit union disclose the existence of a relationship which may provide a basis for additional insurance, the details of the relationship and the interest of other parties in the account must be ascertainable either from the records of the credit union or the records of the member maintained in good faith and in the regular course of business.

(3) The account records of an insured credit union in connection with a trust account shall disclose the name of both the settlor (grantor) and the trustee of the trust and shall contain an account signature card executed by the trustee.

(4) The interests of the co-owners of a joint account shall be deemed equal, unless otherwise stated on the insured credit union's records in the case of a tenancy in common.

(d) Valuation of trust interests: (1) Trust interests in the same trust deposited in the same account will be separately insured if the value of the trust interest is capable of determination, without evaluation of contingencies, except for those covered by the present worth tables and rules of calculation for their use set forth in §20.2031-7 of the Federal Estate Tax Regulations (26 C.F.R. 20.2031-7).

(2) In connection with any trust in which certain trust interests are not capable of evaluation in accordance with the foregoing rule, payment by the Board to the trustee with respect to all such trust interests shall not exceed the basic insured amount of $100.000.

(3) Each trust interest in any trust established by two or more settlors shall be deemed to be derived from each settlor pro rata to his contribution to the trust.

(4) The term "trust interest" means the interest of a beneficiary in an irrevocable express trust, whether created by trust instrument or statute, but does not include any interest retained by the settlor.

§745.3 Single Ownership Accounts.

(a) Funds owned by an individual and deposited in the manner set forth below shall be added together and insured up to $100,000 in the aggregate.

(1) *Individual accounts.* Funds owned by an individual (or by the husband-wife community of which the individual is a member) and deposited in one or more accounts in the individual's own name shall be insured up to $100,000 in the aggregate.

(2) *Accounts held by agents or nominees.* Funds owned by a principal and deposited in one or more accounts in the name or names of agents or nominees shall be added to any individual account of the principal and insured up to $100,000 in the aggregate.

(3) *Custodial loan accounts.* Loan payments received by a Federal credit union prior to remittance to other parties to whom the loan was sold pursuant to Section 107(13) of the Federal Credit Union Act and Section 701.23 of NCUA's Regulations shall be considered to be funds owned by the borrower and shall be added to any individual accounts of the borrower and insured up to $100,000 in the aggregate.

(b) Funds held by a guardian, custodian, or conservator for the benefit of his ward or for the benefit of a minor under a Uniformed Gifts to Minors Act and deposited in one or more accounts in the name of the guardian, custodian, or conservator are insured up to $100,000 in the aggregate, separately from any other accounts of the guardian, custodian, conservator, ward, or minor.

§745.4 Testamentary Accounts.

(a) The term "testamentary account" refers to a revocable trust account, tentative or "Totten" trust account, "payable-on-death" account, or any similar account which evidences an intention that the funds shall pass on the death of the owner of the funds to named beneficiary.

(b) If the named beneficiary of a testamentary account is a spouse, child, or grandchild of the owner, the account shall be insured up to $100,000 in the aggregate as to each such beneficiary,

separately from any other accounts of the owner or beneficiary, regardless of the membership status of the beneficiary.

(c) If the named beneficiary of a testamentary account is other than the owner's spouse, child, or grandchild, the funds in such account shall be added to any individual accounts of such owner and insured by $100,000 in the aggregate.

§745.5 Accounts Held by Executors or Administrators

Funds of a decedent held in the name of the decedent or in the name of the executor or administrator of the decedent's estate and deposited in one or more accounts shall be insured up to $100,000 in the aggregate for all such accounts, separately from the individual accounts of the beneficiaries of the estate or of the executor or administrator.

§745.6 Accounts Held by a Corporation, Partnership, or Unincorporated Association

Accounts of a corporation, partnership, or unincorporated association engaged in any independent activity shall be insured up to $100,000 in the aggregate. The account of a corporation, partnership, or unincorporated association not engaged in an independent activity shall be deemed to be owned by the person or persons owning such corporation or comprising such partnership or unincorporated association and, for account insurance purposes, the interest of each person in such an account shall be added to any other account individually owned by such person and insured up to $100,000 in the aggregate. For purposes of this section, "independently activity" means an activity other than one directed solely at increasing insurance coverage.

§745.7 (Reserved)

§745.8 Joint Accounts

(a) Separate insurance coverage. Accounts owned jointly, whether as joint tenants with right of survivorship, as tenants by the entireties, as tenants in common, or by husband and wife as community property, shall be insured separately from accounts individually owned by any of the co-owners.

(b) Qualifying joint accounts. Joint accounts are insured separately from individual accounts up to a maximum of $100,000 provided that each of the co-owners has personally signed an account signature card and has a right of withdrawal on the same basis as the other co-owners.

(c) Failure to qualify. An account owned jointly which does not qualify as a joint account for purposes of insurance of accounts shall be treated as owned by the named persons as individuals and the actual ownership interest of each such person in such account shall be added to any other accounts individually owned by such person and insured up to $100,000 in the aggregate. An account will not fail to qualify as a joint account if a joint owner is a minor and applicable state law limits or restricts a minor's withdrawal rights.

(d) Same combination of individuals. All joint accounts owned by the same combination of individuals shall be added together and insured up to $100,000 in the aggregate.

(e) Different combination of individuals. A person holding an interest in more than one joint account owned by different combinations of individuals may receive a maximum of $100,000 insurance coverage on the total of his interest in those joint accounts.

(f) Nonmember joint owners. A nonmember may become a joint owner with a member on a joint account with right of survivorship. The nonmember's interest in such accounts will be insured in the same manner as the member joint-owner's interest.

§745.9-1 Trust Accounts

(a) For purposes of this section, "trust" refers to an irrevocable trust.

(b) All trust interests (as defined in subsection 745.2(d)(4)), for the same beneficiary, deposited in an account and established pursuant to valid trust agreements created by the same settlor (grantor) shall be added together and insured up to $100,000 in the aggregate, separately from other accounts of the trustee of such trust funds or the settlor or beneficiary of such trust arrangements.

§745.9-2 IRA/Keogh Accounts.

(a) The present vested ascertainable interest of a participant or designated beneficiary in a trust or custodial account maintained pursuant to a pension or profit-sharing plan described under §401(d) (Keogh account) or §408(a) (IRA) of the Internal Revenue Code shall each be insured up to $100,000 separately from other accounts of the participant or designated beneficiary. An IRA account shall be separately insured from a Keogh account.

(b) Upon liquidation of the credit union, any share insurance payment shall be made by the NCUA Board to the trustee or custodian, or the successor trustee or custodian, unless otherwise directed in writing by the plan participant or beneficiary.

§745.9-3 Deferred Compensation Accounts.

Funds deposited by an employer pursuant to a deferred compensation plan (including §401(K) of the Internal Revenue Code) shall be insured up to $100,000 as to the interest of each plan participant who is a member, separately from other accounts of the participant or employer.

§745.10 Public Unit Accounts.

(a) Public funds invested in Federal credit unions and federally-insured state credit unions authorized to accept such investments shall be insured as follows:

(1) Each official custodian of funds of the United States lawfully investing the same in a federally-insured credit union shall be separately insured up to $100,000;

(2) Each official custodian of funds of any state of the United States or any county, municipality, or political subdivision thereof lawfully investing the same in a federally-insured credit union in the same state shall be separately insured up to $100,000;

(3) Each official custodian of funds of the District of Columbia lawfully investing the same in a federally-insured credit union in the District of Columbia shall be separately insured up to $100,000;

(4) Each official custodian of funds of the Commonwealth of Puerto Rico, the Panama Canal Zone, or any territory or possession of the United States, or any county, municipality, or political subdivision thereof lawfully investing the same in a federally-insured credit union in Puerto Rico, the Panama Canal Zone, or any such territory or possession, respectively, shall be separately insured up to $100,000;

(5) Each official custodian of tribal funds of any Indian tribe (as defined in Section 3(c) of the Indian Financing Act of 1974) or agency thereof lawfully investing the same in a federally-insured credit union shall be separately insured up to $100,000.

(b) Each official custodian referred to in subsections (a)(2), (3), and (4) of this section lawfully investing such funds in a federally-insured credit union outside their respective jurisdictions shall be separately insured up to $100,000; and

(c) For purposes of this section, if the same person is an official custodian of more than one public unit, he shall be separately insured with respect to the public funds held by him for each such unit, but he shall not be separately insured with respect to all public funds of the same public unit by virtue of holding different offices in such unit or by holding such funds for different purposes.

(d) For purposes of this section, "lawfully investing" means pursuant to the statutory or regulatory authority of the custodian or public unit.

§745.11 Accounts Evidenced by Negotiable Instruments.

If any insured account obligation of a credit union is evidenced by a negotiable certificate account, negotiable draft, negotiable cashier's or officer's check, negotiable certified check, or negotiable traveler's check or letter of credit, the owner of such account obligation will be recognized for all purposes of a claim for insured accounts to the same extent as if his name and interest were disclosed on the records of the credit union provided the instrument was in fact negotiated to such owner prior to the date of the closing of the credit union. Affirmative proof of such negotiation must be offered in all cases to substantiate the claim.

§745.12 Account Obligations for Payment of Items Forwarded for Collection by Depository Institution Acting as Agent.

Where a closed credit union has become obligated for the payment of items forwarded for collection by a depository institution acting solely as agent, the owner of such items will be recognized for all purposes of a claim for insured accounts to the same extent as if his name and interest were disclosed on the records of the credit union when such claim for insured accounts, if otherwise payable, has been established by the execution and delivery of prescribed forms. Such depository institution forwarding such items for the owners thereof will be recognized as agent for such owners for the purpose of making an assignment of the rights of such owners against the closed insured credit union to the Board and for the purpose of receiving payment on behalf of such owners.

§745.13 Notification to Members/ Shareholders.

Each insured credit union shall provide notice to its members concerning NCUA insurance coverage of member accounts. This may be accomplished by placing either a copy of Part 745 of these rules, the Appendix, or one or more copies of the NCUA brochure "Your Insured Funds" in each branch office and main office of the credit union. Copies of these materials shall also be made available to members upon request. For purposes of this section, an automated teller machine or point of sale terminal is not a branch office.

APPENDIX—EXAMPLES OF INSURANCE COVERAGE AFFORDED ACCOUNTS IN CREDIT UNIONS INSURED BY THE NATIONAL CREDIT UNION SHARE INSURANCE FUND

The following examples illustrate insurance coverage on accounts maintained in the same federally-insured credit union. They are intended to cover various types of ownership interests and combinations of accounts which may occur in connection with funds invested in insured credit unions. These examples interpret the rules for insurance of accounts contained in 12 C.F.R. Part 745.

The examples, as well as the rules which they interpret, are predicated upon the assumption that, (1) invested funds are actually owned in the manner indicated on the credit union's records and (2) the owner of funds in an account is a credit union member or otherwise eligible to maintain an insured account in a credit union. If available evidence shows that ownership is different from that on the institution's records, the National Credit Union Share Insurance Fund may pay claims for insured accounts on the basis of actual rather than ostensible ownership. Further, the examples and the rules which they interpret do not extend insurance coverage to persons otherwise not entitled to maintain an insured account or to account relationships that have not been approved by the Board as an insured account.

A. SINGLE OWNERSHIP ACCOUNTS

All funds owned by an individual member (or, in a community property state, by the husband-wife community of which the individual is a member) and invested by the member in one or more individual accounts are added together and insured to the $100,000 maximum. This is true whether the accounts are maintained in the name of the individual member owning the funds, in the name of the member's agent or nominee, or in the name of a guardian, conservator or custodian holding the funds for the member's benefit.

Example 1

Question: Members A and B, husband and wife, each maintain an individual account containing $100,000. In addition, they hold a joint account containing $100,000. What is the insurance coverage?

Answer: Each account is separately insured up to $100,000 for a total coverage of $300,000. The coverage would be the same whether the individual accounts contain funds owned as community property or as individual property of the spouses (§745.3(a) and §745.8(a)).

Example 2

Question: Members H and W, husband and wife, reside in a community property share. H maintains a $100,000 account consisting of his separately-owned funds and invests $100,000 of community property funds in another account, both of which are in his name alone. What is the insurance coverage?

Answer: The two accounts are added together and insured to a total of $100,000. $100,000 is uninsured (§745.3(a)).

Example 3

Question: Member A has $92,500 invested in an individual account, and his agent, Member B, invests $25,000 of A's funds in a properly designated agency account. B also holds a $100,000 individual account. What is the insurance coverage?

Answer: A's individual account and the agency account are added together and insured to the $100,000 maximum, leaving $17,500 uninsured. The investment of funds through an agent does not result in additional insurance coverage for the principal (§745.3(b)). B's individual account is insured separately from the agency account (§745.3(a)). However, if the account records of the credit union do not show the agency relationship under which the funds in the $25,000 account are held, the $25,000 in B's name could, at the option of the NCUSIF, be added to his individual account and insured to $100,000 in the aggregate, leaving $25,000 uninsured (§745.2(c)).

Example 4

Question: Member A holds a $100,000 individual account. Member B holds two accounts in his own name, the first containing $25,000 and the second containing $92,500. In processing the claims for payment of insurance on these accounts, the NCUSIF discovers that the funds in the $25,000 account actually belong to A and that B had in-

vested these funds as agent for A, his undisclosed principal. What is the insurance coverage?

Answer: Since the available evidence shows that A is the actual owner of the funds in the $25,000 account, those funds would be added to the $100,000 individual account held by A (rather than to B's $92,500 account) and insured to the $100,000 maximum, leaving $25,000 uninsured. (§745.3(b).) B's $92,500 individual accunt would be separately insured.

Example 5

Question: Member C, a minor, maintains an individual account of $750. C's grandfather makes a gift to him of $100,000, which is invested in another account by C's father, designated on the credit union's records as custodian under a Uniform Gifts to Minors Act. C's father, also a member, maintains an individual account of $100,000. What is the insurance coverage?

Answer: C's individual account and the custodianship account held for him by his father are added together and would be insured to the $100,000 maximum (§745.3(c)). The individual account held by C's father is separately insured to the $100,000 maximum (§745.3(a)).

Example 6

Question: Member G, a court appointed guardian, invests in a properly designated account $100,000 of funds in his custody which belong to member W, his ward. W and G each maintain $25,000 individual accounts. What is the insurance coverage?

Asnwer: W's individual account and the guardianship account in G's name are added together and insured to $100,000 in the aggregate leaving W with $25,000 in uninsured funds. The fact that a guardian has been judicially appointed does not alter the fact that the guardianship funds legally belong to W, the ward, and are insured as W's individually owned funds (§745.3(c)). G's individual account is separately insured (§745.3(a)).

Example 7

Question: X Credit Union acts as a servicer of FHA, VA, and conventional mortgage loans made to its members but sold to other parties. Each month X receives loan payments, for remittance to the other parties, from approximately 2,000 member mortgagors. The monies received each month total $1,000,000 and are maintained in a custodial loan account. What is the insurance coverage?

Answer: X Credit Union acts as custodian for the 2,000 individual mortgagors. The interest of each mortgagor is separately insured as his individual account (but added to any other individual accounts which the mortgagor holds in the Credit Union) (§745.3(d)).

B. TESTAMENTARY ACCOUNTS

The term "testamentary account" refers to a revocable trust account, tentative or "Totten" trust account, "payable-on-death" account, or any similar account which evidences an intention that the funds shall pass on the death of the owner of the funds to a named beneficiary. If the beneficiary is a spouse, child, or grandchild of the owner, the funds in all such accounts are insured for the owner up to $100,000 in the aggregate as to each such beneficiary, separately from any other individual accounts of the owner. If the beneficiary of such an account is other than a spouse, child, or grandchild of the owner, the funds in the account are, for insurance purposes, added to any other individual accounts of the owner and insured up to $100,000 in the aggregate. In the case of a revocation is deemed to be the owner of the funds in the account. If a revocable trust account is held in the name of a fiduciary other than the owner of the funds, any other accounts held by the fiduciary are insured separately from such revocable trust account.

Example 1

Question: Member H invests $200,000 in a revocable trust account with his son, S, and his daughter, D, as named beneficiaries. What is the insurance coverage?

Answer: Since S and D are children of H, the owner of the account, the funds are insured up to $100,000 as to each beneficiary (§745.4(c)). Assuming that S and D have equal beneficial interests ($100,000 each), H is fully insured for this account.

Example 2

Question: Member H invests $100,000 in each of four "payable-on-death" accounts. Under the terms of each account contract, H has the right to withdraw any or all of the funds in the account at any time. Any funds remaining in the account at

the time of H's death are to be paid to a named beneficiary. The respective beneficiaries of the four accounts are H's wife, his mother, his brother, and his son. H also holds an individual account containing $100,000. What is the insurance coverage?

Answer: The accounts payable on death to H's wife and son are each separately insured to the $100,000 maximum (§745.4(b)). The accounts payable to H's mother and brother are added to H's individual account and insured to $100,000 in the aggregate, leaving $200,000 uninsured (§745.4(c)).

Example 3

Question: Members H and W jointly invest in a "payable-on-death" account for the benefit of their son, S, and daughter, D. The account is held by H and W with right of survivorship. What is the maximum insurance coverage available on the account?

Answer: Since S and D are the children of H and W, the account will be insured up to $100,000 as to each beneficiary separately from any accounts of the owners, H and W (§745.4(b)). H would be entitled to $100,000 insurance for S and $100,000 for D. W would be entitled to the same coverage for a total of $400,000 on the account. However, upon the death of either H or W, insurance coverage would be reduced to $200,000.

C. ACCOUNTS HELD BY EXECUTORS OR ADMINISTRATORS

All funds belonging to a decedent and invested in one or more accounts, whether held in the name of the decedent or in the name of his executor or administrator, are added together and insured to the $100,000 maximum. Such funds are insured separately from the individual accounts of any of the beneficiaries of the estate or of the executor or administrator.

Example 1

Question: Member A, administrator of Member D's estate, sells D's automobile and invests the proceeds of $12,500 in an account entitled "A Administrator of the estate of D." A has an individual account in that same credit union containing $100,000. Prior to his death, D had opened an individual account of $100,000. What is the insurance coverage?

Answer: The $12,500 is added to D's individual account and insured to $100,000, leaving $12,500 uninsured. A's individual account is separately insured for $100,000 (§745.5).

D. ACCOUNTS HELD BY A CORPORATION, PARTNERSHIP OR UNINCORPORATED ASSOCIATION

All funds invested in an account or accounts by a corporation, a partnership or an unincorporated association engaged in any independent activity are added together and insured to the $100,000 maximum. The term "independent activity" means any activity other than the one directed solely at increasing coverage. If the corporation, partnership or unincorporated association is not engaged in an independent activity, any account held by the entity is insured as if owned by the persons owning or comprising the entity, and the imputed interest of each such person is added for insurance purposes to any individual account which he maintains.

Example 1

Question: Member X Corporation maintains a $100,000 account. The stock of the corporation is owned by members A, B, C, and D in equal shares. Each of these stockholders also maintains an individual account of $100,000 with the same credit union. What is the insurance coverage?

Answer: Each of the five accounts would be separately insured to $100,000 if the corporation is engaged in an independent activity and has not been established merely for the purpose of increasing insurance coverage. The same would be true if the business were operated as a bona fide partnership instead of as a corporation (§745.6). However, if X corporation was not engaged in an independent activity, then $25,000 (1/4 interest) would be added to each account of A, B, C, and D. The accounts of A, B, C, and D would then each be insured to $100,000, leaving $25,000 in each account uninsured.

Example 2

Question: Member C College maintains three separate accounts with the same credit union under the titles: "General Operating Fund," "Teachers Salaries," and "Building Fund." What is the insurance coverage?

Answer: Since all of the funds are the property of the college, the three accounts are added

together and insured only to the $100,000 maximum (§745.6).

Example 3

Question: The men's club of X Church carries on various social activities in addition to holding several fund-raising campaigns for the church each year. The club is supported by membership dues. Both the club and X Church maintain member accounts in the same credit union. What is the insurance coverage?

Answer: The men's club is an unincorporated association engaged in an independent activity. If the club funds are, in fact, legally owned by the club itself and not the church, each account is separately insured to the $100,000 maximum (§745.6).

Example 4

Question: The PQR Union, a member of the ABC Federal Credit Union, has three locals in a certain city. Each of the locals maintains an account containing funds belonging to the parent organization. All three accounts are in the same insured credit union. What is the insurance coverage?

Answer: The three accounts are added together and insured up to the $100,000 maximum (§745.6).

E. PUBLIC UNIT ACCOUNTS

For insurance purposes, the official custodian of funds belonging to a public unit, rather than the public unit itself, is insured as the accountholder. All funds belonging to a public unit and invested by the same custodian in an insured credit union are added together and insured to the $100,000 maximum, regardless of the number of accounts involved and regardless of whether the funds are invested in accounts located in or outside the state. If there is more than one official custodian for the same public unit, the funds invested by each custodian are separately insured up to $100,000. If the same person is custodian of funds for more than one public unit, he is separately insured to $100,000 with respect to the funds of each unit held by him in properly designated accounts. The maximum coverage for an official custodian of funds of the United States would be $100,000.

For insurance purposes, a "political subdivision" is entitled to the same insurance coverage as any other public units. "Political subdivision" includes any subdivision of a public unit or any principal department of such unit (1) the creation of which has been expressly authorized by state statute, (2) to which some functions of government have been allocated by state statute, and (3) to which funds have been allocated by statute or ordinance for its exclusive use and control.

Example 1

Question: As Comptroller of Y Consolidated School District, A maintains a $125,000 account in the credit union containing school district funds. He also maintains his own $100,000 member account in the same credit union. What is the insurance coverage?

Answer: The two accounts will be separately insured, assuming the credit union's records indicate that the account containing the school district funds is held by A in a fiduciary capacity. Thus, $100,000 of the school's funds and the entire $100,000 in A's personal account will be insured (§§745.10(2) and 745.3).

Example 2

Question: A, as city treasurer, and B, as chief of the city police department, each have $100,000 in city funds invested in custodial accounts. What is the insurance coverage?

Answer: Assuming that both A and B have official custody of the city funds, each account is separately insured to the $100,000 maximum (§745.10(2)).

Example 3

Question: A is Treasurer of X County and collects certain tax assessments, a portion of which must be paid to the state under statutory requirement. A maintains an account for general funds which belong to the State Treasurer. The credit union's records indicate that the separate account contains funds held for the State. What is the insurance coverage?

Answer: Since two public units own the funds held by A, the accounts would each be separately insured to the $100,000 maximum (§745.10(2)).

Example 4

Question: A city treasurer invests city funds in each of the following accounts: "General Operat-

ing Account," "School Transportation Fund," "Local Maintenance Fund," and "Payroll Fund." By administrative direction the city treasurer has allocated the funds for the use of and control by separate departments of the city. What is the insurance coverage?

Answer: All of the accounts are added together and insured in the aggregate to $100,000. Because the allocation of the city's funds is not be statute or ordinance for the specific use of and control by separate departments of the city, separate insurance coverage to the maximum of $100,000 is not afforded to each account (§§745.1(c) and 745.10(2)).

Example 5

Question: A, the custodian of retirement funds of a military exchange, invests $1,000,000 in an insured credit union. The military exchange, a nonappropriated fund instrumentally of the United States, is deemed to be a public unit. The employees of the exchange are the beneficiaries of the retirement funds but are not members of the credit union. What is the insurance coverage?

Answer: Because A invested the funds on behalf of a public unit, in his capacity as custodian, those funds qualify for $100,000 share insurance even though A and the public unit are not within the credit union's field of membership. Since the beneficiaries are neither public units nor members of the credit union they are not entitled to separate share insurance. Therefore, $900,000 is uninsured (§745.10(1)).

Example 6

Question: A is the custodian of the County's employee retirement funds. He deposits $1,000,000 in retirement funds with the credit union. The "beneficiaries" of the retirement fund are not themselves public units nor are they within the credit union's field of membership. What is the insurance coverage?

Answer: Because A invested the funds on behalf of a public unit, in his capacity as custodian, those funds qualify for $100,000 share insurance even though A and the public unit are not within the credit union's field of membership. Since the beneficiaries are neither public units nor members of the credit union they are not entitled to separate share insurance. Therefore $900,000 is uninsured (§745.10(2)).

Example 7

Question: A county treasurer deposits in an insured credit union $100,000 in each of the following accounts:

"General Operating Fund"
"County Roads Department Fund"
"County Water District Fund"
"County Public Improvement District Fund"
"County Emergency Fund"

What is the insurance coverage?

Answer: The "County Roads Department," "County Water District" and "County Public Improvement District" accounts would each be separately insured to $100,000 if the funds in each such account have been allocated by law for the exclusive use of a separate county department of subdivision expressly authorized by State statute.

Funds in the "General Operating" and "Emergency Fund" accounts would be added together and insured in the aggregate to $100,000, if such funds are for countywide use and not for the exclusive use of any subdivision or principal department of the county, expressly authorized by State statute (§§745.1(c) and 745.10(2)).

Example 8

Question: A, the custodian of Indian tribal funds, lawfully invests $1,000,000 in an account in an insured credit union on behalf of 15 different tribes; the records of the credit union show that no tribe's interest exceeds $100,000. A, as official custodian, also invests $1,000,000 in the same credit union on behalf of 100 individual indians, who are not members; each indian's interest is $10,000. What is the insurance coverage?

Answer: Because each tribe is considered a separate public unit, the custodian of each tribe, even though the same person, is entitled to separate insurance for each tribe (§745.10(5)). Since the credit union's records indicate no tribe has more than $100,000 in the account, the $1,000,000 would be fully insured as 15 separate tribal accounts. If any one tribe had more than a $100,000 interest in the funds, it would be insured only to $100,000 and any excess would be uninsured.

However, the $1,000,000 invested on behalf of the individual indians would not be insured since the individual indians are neither public units nor, in the example, members of the credit union. If A is the custodian of the funds in his capacity as an official of a governmental body that qualified

as a public unit, then the account would be insured for $100,000 leaving $900,000 uninsured.

F. JOINT ACCOUNTS

Accounts held under any form of joint ownership valid under state law (whether as joint tenants with right of survivorship, tenants by the entireties, tenants in common, or by husband and wife as community property) are insured up to $100,000. This insurance is separate from that afforded individual accounts held by any of the co-owners.

An account is insured as a joint account only if each of the co-owners has personally executed an account signature card and possesses withdrawal rights. An account owned jointly which does not qualify as a joint account for insurance purposes is insured as if owned by the named persons as individuals. In that case, the actual ownership interest in the account of each person is added to any other accounts individually owned by such person and insured up to $100,000 in the aggregate.

Any individual, including a minor, may be a co-owner of a joint account provided that, under State law, he may execute a signature card and withdraw funds from the account on the same basis as the other co-owners.

All funds invested in joint accounts owned by the same combination of individuals are first added together and insured to the $100,000 maximum. Where a member has an interest in more than one joint account and different joint owners are involved, his interests in all of such joint accounts are then added together and insured to $100,000 in the aggregate.

For insurance purposes, the co-owners of any joint account are deemed to have equal interests in the account, except in the case of a tenancy in common. With a tenancy in common, equal interests are presumed unless otherwise stated on the records of the credit union.

Example 1

Question: Members A and B maintain an account as joint tenants with right of survivorship and, in addition, each holds an individual account. Is each account separately insured?

Answer: If both A and B have executed the signature card and possess withdrawal rights with respect to the joint funds, each account is separately insured to the $100,000 maximum (§745.8(a) and (b)).

Example 2

Question: Members H and W, husband and wife, reside in a community property state. Each holds an individual account and, in addition, they hold a qualifying joint account. The funds in all three accounts consist of community property. Is each account separately insured?

Answer: Yes. An account in the individual name of a spouse will be insured up to $100,000 whether the funds consist of community property or separate property of the spouse. A joint account containing community property is also insured up to $100,000. Thus, community property can be used for individual accounts in the name of each spouse and for a joint account in the name of both spouses, each of which accounts is separately insured up to $100,000 (§§745.3(a) and 745.8(a)).

Example 3

Question: Two accounts of $100,000 each are held by a member husband and wife under the following names:

John Doe and Mary Doe, husband and wife, as joint tenants with right of survivorship.
Mrs. John Doe and John Q. Doe (community property).

Are the accounts separately insured?

Answer: No. Both accounts are considered joint accounts owned by the same combination of individuals, regardless of the form of joint ownership. Reversal of names or use of different styles does not change the result, as long as the account owners are in fact the same in both cases. For insurance purposes, the accounts are added together and insured to the maximum of $100,000, leaving $100,000 uninsured (§745.8(d)).

Example 4

Question: the following accounts are held by members A, B, and C, each of whom has personally executed signature cards for the accounts in which he has an interest. Each co-owner of a joint account possesses the necessary withdrawals rights.

1. A, as an individual—$100,000
2. B, as an individual—$100,000
3. C, as an individual—$100,000
4. A and B, as joint tenants w/r/o survivorship—$90,000
5. A and C, as joint tenants w/r/o survivorship—$90,000

6. B and C, as joint tenants w/r/o survivorship—$90,000
7. A, B and C, as joint tenants w/r/o survivorship—$90,000

What is the insurance coverage?

Answer: Accounts numbers 1, 2 and 3 are each separately insured for $100,000 as individual accounts held by A, B and C, respectively (§745.3(a)). With regard to accounts numbered 4, 5, 6 and 7, the respectively interests of A, B and C in such accounts are added together for insurance purposes (§745.8(e)). The interest of the co-owners of each joint account are deemed equal for insurance purposes (§745.2(c)(4)). Thus, A has an interest of $45,000 in account No. 4, $45,000 in account No. 5 and $30,000 in account No. 7, for a total joint account interest of $120,000, of which $100,000 is insured. The interest of B and C are similarly insured.

Example 5

Question: A, B and C hold accounts as set forth in Example 4. Members A and B are husband and wife; C, their minor child, has failed to execute the signature card for account No. 7. In account No. 5, C cannot make a withdrawal without A's written consent. In account No. 6 the signatures of both B and C are required for withdrawal. A has provided all of the funds for accounts numbered 5 and 7. What is the insurance coverage?

Answer: If any of the co-owners of a joint account have failed to meet any of the joint account requirements, the account is not insured as a joint account. Instead, the account is insured as if it consisted of commingled individual accounts of each of the co-owners in accordance with his actual ownership funds, as determined under applicable state law (§745.8(c)). Account No. 5 is not insured as a joint account because C does not possess the right to withdraw the funds in accordance with his purported interest in the account. However, account No. 6 does qualify as a joint account for insurance purposes since each co-owner possesses the right to withdraw funds on the same basis. Account No. 7 is not insured as a joint account since C did not personally execute the signature card. Assuming that, under applicable state law, A has the entire actual ownership interest in accounts 5 and 7, all of the funds in these accounts are treated for insurance purposes as individually owned by A (§745.8(c)). Thus, the $180,000 in these accounts is added to the $100,000 in account No. 1, A's individual account, and insured up to $100,000 in the aggregate, leaving $1[illegible] sured. Accounts 4 and 6, the remain[illegible] accounts, are each insured to the $100,000 since they are owned by different combination individuals and no co-owner has an aggrega[illegible] interest in the two accounts in excess of $100,000 (§745.8(e)).

Example 6

Question: The following accounts are owned by members, A, B and C, each of whom has personally executed signature cards for the accounts in which he has an interest. Each co-owner possesses withdrawl rights.

1. A, as an individual—$100,000
2. B, as an individual—$100,000
3. A, B and C, as joint tenants w/r/o survivorship—$100,000
4. A, B and C, as joint tenants w/r/o survivorship—$200,000
5. A, and B, as joint tenants w/r/o survivorship—$100,000

What is the insurance coverage?

Answer: Accounts numbered 1 and 2 are each separately insured for $100,000 as individual accounts held by A, B, respectively (§745.3(a)). With respect to the joint accounts, accounts numbered 3 and 4 are owned by the same combination of individuals and are added together and insured to a maximum of $100,000, leaving $200,000 uninsured (§745.8(d)). A, B and C each have a $33,334 insured interest in accounts 3 and 4. A and B also maintain a joint account, account number 5. Because C has no interest in this account, it is owned by a combination of individuals different from accounts 3 and 4. The interests of A and B in account number 5 are deemed to be equal (§745.2(c)(4)). A's $50,000 interest in account 5 is added to his insured interest in accounts 3 and 4, giving him a total of $83,334 insurance coverage for his interests in the various joint accounts, in addition to the insurance in the amount of $100,000 provided for his individual account. B's interests in accounts 3, 4 and 5 are identical to A's and her interests are insured in a like manner.

G. TRUST ACCOUNTS AND RETIREMENT ACCOUNTS

A trust estate is the interest of a beneficiary in an irrevocable express trust, whether created by trust instrument or statute, that is valid under

state law. Thus, funds invested in an account by a trustee under an irrevocable express trust are insured on the basis of the beneficial interests under such trust. The interest of each beneficiary in an account (or accounts) established under such a trust arrangement is insured to $100,000 separately from other accounts held by the trustee, the settlor (grantor), or the beneficiary. However, in cases where a beneficiary has an interest in more than one trust arrangement created by the same settlor, the interests of the beneficiary in all accounts established under such trusts are added together for insurance purposes, and the beneficiary's aggregate interest derived from the same settlor is separately insured to the $100,000 maximum.

A beneficiary's interest in an account established pursuant to an irrevocable express trust arrangement is insured separately from other beneficial interests (trust estates) invested in the same account if the value of the beneficiary's interest (trust estate) can be determined (as of the date of a credit union's insolvency) without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in §20.2031-10 of the Federal Estate Tax Regulations (26 C.F.R. 20-2031-10). If any trust estates in such an account cannot be so determined, the insurance with respect to all such trust estates together shall not exceed the basic insured amount of $100,000.

In order for insurance coverage of trust accounts to be effective in accordance with the foregoing rules, certain recordkeeping requirements must be met. In connection with each trust account, the credit union's records must indicate the name of both the settlor and the trustee of the trust and must contain an account signature card executed by the trustee indicating the fiduciary capacity of the trustee. In addition, the interests of the beneficiaries under the trust must be ascertainable from the records of either the credit union or the trustee, and the settlor or beneficiary must be a member of the credit union. If there are two or more settlors or beneficiaries, then either all the settlors or all the beneficiaries must be members of the credit union.

Although each ascertainable trust estate is separately insured, it should be noted that in short-term trusts the insurable interest or interests may be very small, since the interests are computed only for the duration of the trust. Thus, if a trust is made irrevocable for a specified period of time, the beneficial interest will be calculated in terms of the length of time stated. A reversionary interest retained by the settlor is treated in the same manner as an individual account of the settlor.

As stated, the trust must be valid under local law. A trust which does not meet local requirements, such as one imposing no duties on the trustee or conveying no interest to the beneficiary, is of no effect for insurance purposes. An account in which such funds are invested is considered to be an individual account.

An account established pursuant to a revocable trust arrangement is insured as a form of individual account and is treated under Section B, supra, dealing with Testamentary Accounts.

IRA and Keogh accounts are separately insured, each up to $100,000. Although credit unions may serve as trustees or custodians for self-directed IRA and Keogh accounts, once the funds are taken out of the credit union, they are no longer insured.

Example 1

Question: Member S invests $45,000 in trust for B, the beneficiary. S also has an individual account containing $90,000 in the same credit union. What is the insurance coverage?

Answer: Both accounts are fully insured. The trust account is separately insured from the individual account of S (§§754.3(a) and 745.9-1(a)).

Example 2

Question: S invests funds in trust for A, B, C, D, and E. A, B, and C are members of the credit union, D, E, and S are not. What is the insurance coverage?

Answer: This is an uninsurable account. Where there is more than one settlor or more than one beneficiary, all the settlors or all the beneficiaries must be members to establish this type of account. since D, E and S are not members, this account cannot legally be established or insured.

Example 3

Question: Member S invests $500,000 in trust for ABC Employees Retirement Fund. Some of the beneficiaries are members and some are not. What is the insurance coverage?

Answer: The account is insured as to the determinable interests of each member beneficiary to a maximum of $100,000 per member. Member inter-

ests not capable of evaluation and nonmember interests shall be added together and insured to a maximum of $100,000 in the aggregate (§745.9-1).

Example 4

Question: Member A has an individual account of $100,000 and establishes an IRA and accumulates $50,000 in that account. Subsequently A becomes self employed and establishes a Keogh account in the same credit union and accumulates $100,000 in that account. What is the insurance coverage?

Answer: Each of A's accounts would be separately insured for up to $100,000. In the example, A would be fully insured for $250,000 (§§745.3(a) and 745.9-2).

Example 5

Question: Member A has a self-directed IRA account with $70,000 in it. The FCU is the trustee of the account. Member transfers $40,000 into a blue chip stock; $30,000 remains in the FCU. What is the insurance coverage?

Answer: Originally, the full $70,000 in A's IRA account is insured. The $40,000 is no longer insured once it is moved out of the FCU. The $30,000 remaining in the FCU is insured (§745.9-2).

NCUA INTERPRETIVE RULING AND POLICY STATEMENT

December 3, 1984

NATIONAL CREDIT UNION ADMINISTRATION

12 C.F.R. CHAPTER VII

Interpretive Ruling and Policy Statment 84-1
Membership in Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA)

ACTION: Interpretive Ruling and Policy Statement (IRPS 84-1)

SUMMARY: This IRPS addresses field of membership policy for Federal credit unions (FCU's). It updates two prior IRPS (82-3 and 83-2), includes NCUA's new policy on granting FCU membership to senior citizens and retirees and sets forth the Standard FCU Bylaws which affect field of membership. Field of membership policy is based on Section 109 of the FCU Act, 12 U.S.C. §109, which states that FCU 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."

EFFECTIVE DATE: November 15, 1984

ADDRESS: National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Robert Fenner, Director, Department of Legal Services, or Hattie Dian, Staff Attorney, at the above address, or telephone (202) 357-1030.

SUPPLEMENTARY INFORMATION: In September of 1983, the National Credit Union Administration Board (Board) directed that a comprehensive study of the Board's deregulation of the field of membership policy be conducted. As a result of the study, the Board concluded that a revised IRPS should be developed and published to all Federal credit unions consisting of a concise statement of the recent changes in field of membership policy. Section 109 of the FCU Act, 12 U.S.C. §1759, limits FCU

membership to "groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community or rural district." Prior to April 1982, Section 109 was interpreted by NCUA narrowly. The deregulation of field of membership policy essentially began in April 1982. The NCUA Board now interprets the FCU Act more broadly regarding field of membership. The primary intent of the newly expanded field of membership policy and the essential basis for all changes in the policy since April 1982 is to provide credit union service to new groups -- to people who do not presently have credit union service available to them.

This new policy statement (IRPS 84-1) combines the two previous policy statements, IRPS 82-3 and IRPS 83-2, sets out modifications which have been made since their publication, incorporates several unwritten policies which address field of membership, and sets forth the new policy on service to senior citizens and retirees. Several of the recommendations made in the field of membership policy study are also incorporated in the new policy statement. Two bylaw provisions which affect field of membership are also addressed in the new IRPS. IRPS 82-3 and IRPS 83-2 are cancelled as of the effective date of IRPS 84-1. The Chartering and Organizing Manual for Federal Credit Unions (Manual), which was revised in 1980, is superseded to the extent that it conflicts with this IRPS. All other portions of the Manual remain in effect. The Manual is being updated to reflect the current field of membership policy. It will be published in the near future.

IRPS 84-1 is divided into four major sections. The first section is entitled Purchase of Loans of Liquidating Credit Unions Under Section 107(14). This section appeared as part of IRPS 82-3. The Board's policy has not changed in this area. FCU's may offer membership services to members of liquidating credit unions whose loans the FCU has purchased pursuant to Section 107(14) of the FCU Act, 12 U.S.C. §1757(14). IRPS 82-3 also addressed FCU purchase of notes of liquidating credit unions for investment value pursuant to Section 107(13) of the FCU Act. This section is deleted from the new IRPS since it does not concern field of membership policy. FCU's retain the authority to purchase notes of liquidating credit unions pursuant to Section 107(13) of the FCU Act. The aggregate balances of such notes may not exceed five percent of the purchasing credit union's total shares and undivided earnings according to Section 107(13). This limitation does not apply to the purchase of loans when membership services are offered under Section 107(14).

The second section of the IRPS is entitled Bylaws Affecting Field of Membership. The "once a member, always a member" Bylaw (Article II, Section 5 of Standard Federal Credit Union Bylaws) has been in effect since 1968 and has not been changed. With this Bylaw, if an FCU board of directors so resolves, members can retain affiliation with their FCU even though they are no longer within the field of membership. The Bylaw defining immediate

families (Article XVIII, Section 2(a) of the Standard Federal Credit Union Bylaws) was deregulated in 1983. FCU's that wish to serve immediate family members must first ascertain that the field of membership provision of the FCU's charter includes family members. If family members are not included, the FCU may apply to the appropriate regional director for a charter amendment. The FCU then has three basic choices in defining family members. 1. The FCU may utilize Article XVIII, Section 2(a) of the standard form of FCU bylaws, which defines members of their immediate families to mean "grandparents, parents, husband, wife, children, grandchildren, brothers and sisters living under the same roof and in the same household." 2. The FCU may adopt one of the standard Bylaw amendments set out in NCUA Letter No. 56 (April 10, 1981). These standard amendments expand the definition of immediate families. 3. The FCU may choose to narrow or expand this definition by adopting a standard bylaw amendment, in accordance with the procedures set out in NCUA Letter No. 73 (February 2, 1983), that allows the FCU's board of directors to develop its own definition of the term "members of their immediate families."

In general, family members of anyone within the field of membership may join the FCU. There is, however, an exception to this policy. When dealing with a student group, immediate family members, however defined, extends only to students who have established membership themselves (i.e., family members may join the credit union only if the student has joined). This policy emphasizes that FCU's should not add student groups merely to include the student's parents in the field of membership.

The third section of the IRPS is entitled Multiple Group Charters. This is the area of field of membership policy that has undergone the most change since deregulation of field of membership began. As previously indicated, Section 109 of the FCU Act provides that FCU 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. The Board interprets the first part of this provision to allow more than one occupational or associational group to be included in the field of membership of a Federal credit union, on the condition that each group has its own occupational or associational common bond. Accordingly, two types of multiple group charters exist pursuant to Section 109 of the FCU Act, those involving occupational and/or associational groups and those involving community based groups. Occupational and/or associational multiple group charters are addressed first.

Prior to 1982, multiple group charters and mergers were limited to either occupational or associational groups (a multiple group of occupational and associational groups could not exist). Multiple groups were further limited in that the common bonds within the multiple group had to be similar. IRPS 82-3 deregulated field of membership so that it was no longer necessary to limit multiple groups to either the associational or

occupational type. A multiple group now could be made up of both associational and occupational groups. The requirement for similar common bonds was also eliminated at that time. As indicated above, the requirement that each group have its own common bond remains intact. The regional directors have been delegated the authority by the Board to grant or deny this type of multiple group charter.

Five additional requirements must be met before this type of multiple group charter or charter amendment will be granted. These are listed in the IRPS. The first three criteria appeared in IRPS 82-3 and have not changed. The fourth criteria has been established to avoid overlaps in fields of membership. The fifth criteria was a part of IRPS 83-2 and has been slightly modified.

An overlap exists when a group is eligible for membership in two or more credit unions. The fourth criteria requires that if the group requesting service is already eligible for membership in another credit union, they must provide justification as to why they no longer desire that service. Policy requires that every effort be made to avoid an overlap situation. Ideally, a group should be eligible for membership in only one credit union. (However, it is recognized that an individual may be eligible for membership in a number of credit unions.) FCU's are encouraged to work out overlap problems internally. If a resolution of the problem is not reasonably forthcoming, and other circumstances warrant an overlap, then an overlap may be permitted. Circumstances to be considered are the nature of the problems, efforts to resolve the problems, financial impact on the credit union, the desires of the groups, and if applicable, the opinions of the state credit union supervisor and other interested parties. Although the fourth criteria is a new requirement for the granting of multiple group charters, NCUA policy on overlaps is unchanged. The addition of the fourth criteria will alert the regional directors to possible overlap situations before they occur.

The fifth criteria for a multiple group charter states that all of the groups must be within the operational area of the home or a branch office of the FCU. The definition of branch office as stated in IRPS 83-2 has been clarified. The policy on justification for adding new groups within the area of a branch office has been slightly modified. Under IRPS 83-2, the addition of a new group could not be used to justify a proposed branch office. A proposed branch office could only be justified on the basis of the current field of membership. This policy has been modified in IRPS 84-1 by changing the requirement that groups be within the well-defined area of an existing branch office to a requirement that they be within the operational area of a branch office. An FCU can now include new groups as partial justification for a proposed branch office if the proposed branch office will also improve credit union service to the existing field of membership. The new group alone is not enough to justify a proposed branch office. The current field of membership must

comprise a significant portion of the total field of membership to be served initially by the proposed branch office. The old policy has been modified for two reasons. In many cases, it effectively denied convenient credit union service to existing fields of membership. In addition, it was difficult to enforce. The requirement that new groups be within the "operational area" of the home or a branch office is substituted for the previous requirement that they be within a "well-defined area" of such an office. Since the limitation is not necessarily a geographic one, operational rather than well-defined area seems more appropriate. As stated in the IRPS, "operational area" shall mean an area surrounding the home or a branch office that can reasonably be served by the applicant credit union as determined by the regional director. The operational area limitation should help to ensure that groups receive service from FCU's, not merely become a part of the field of membership.

One additional issue involving operational area needs to be addressed: the corporate headquarters issue. Under prior policy, when a corporate headquarters was located within the well-defined area of an FCU, the entire employee group could be included in the field of membership. When a majority of employees worked within the operational area but the corporate headquarters was not within the area, the group was not eligible for membership. This inconsistency has been corrected. The new policy is as follows: When either the corporate headquarters is located or a simple majority of employees work within the operational area, the employee group is eligible to be added to the field of membership. It should be noted that these groups will now be treated as any other group in a multiple group charter application and are subject to the five criteria set out above.

The second type of multiple group charter exists when any portion of the group is community based. In order for this type of multiple group charter to be approved, the combined field of membership is limited to a well-defined neighborhood, community or rural district, as determined by the regional director. The well-defined neighborhood, community or rural district is mandated by Section 109 of the FCU Act. Pursuant to delegated authority, if the population of the proposed well-defined neighborhood, community or rural district is under 35,000, the charter decision is made by the regional director. If the population exceeds 35,000, the charter must be approved by the NCUA Board. This population policy also applies whenever a community-based FCU proposes to expand its boundaries. If the population of the proposed expanded community exceeds 35,000, the charter must be approved by the NCUA Board. The policy does not apply when occupational or associational groups outside of the community are added to the field of membership without expansion of boundaries. The regional director will make the termination, regardless of population. Occupational or associational groups outside the community may be added, however, only if they are within an area such that, when combined with the community, the resulting larger area could be considered for a community-based charter.

The regional directors are now authorized to remove new groups added to a credit union if those groups are not being satisfactorily served. This does not include the authority to cut off membership rights of someone who has established membership with the FCU. They would retain their membership through the "once a member, always a member" Bylaw. If an FCU does not have the "once a member, always a member" Bylaw, it may be added before any groups are removed. Removal of groups should reflect the current policy to provide credit union service to new groups - not simply to include new groups within a credit union's field of membership.

One last problem related to multiple group chartering is cross-regional mergers and expansions. Since the field of membership policy has been broadened, more cross-regional mergers and expansions have taken place. The policy on approval and control of cross-regional mergers and expansions is as follows. No cross-regional merger or expansion will be authorized without the approval of all regional directors affected. In terms of administrative and operational control, the location of the continuing credit union in the case of a merger, or the home office in the case of an expansion, is controlling. That region will monitor and control the merged or expanded FCU and, of course, continue to examine the FCU once the merger or expansion is completed.

The last section of the IRPS addresses credit union service to senior citizens and retirees. On October 17, 1983, (See 48 F.R. 48830, dated October 21, 1983) the NCUA Board issued a request for comments for the second time on whether or not credit union services should be extended to retirees. Two hundred and fifty-one commenters responded to the second request. The overwhelming majority of the commenters (189) were in favor of expanding credit union service. Of those 189, 117 were in favor of offering such service to all retirees, regardless of prior credit union membership. Seventy-two commenters favored a more limited expansion. These 72 were fairly equally divided between favoring service to retirees with prior credit union membership and to those with membership or eligibility for membership in a "like sponsor" credit union. Those that preferred the "like sponsor" option believed that such a requirement would maintain a common bond within each credit union. Fifty commenters were opposed to any extension of credit union service to retirees. The most frequent reason given for the opposition to the extension of service to retirees related to concerns about expansion of the common bond.

Having considered this issue further, the Board believes that none of the specific policies previously proposed concerning senior citizens and/or retirees provides an acceptable solution. On the one hand, legitimate concern has been expressed that simply authorizing Federal credit unions to serve all senior citizens and retirees in their area may not meet the statutory requirement of an occupational or associational common bond.

(Community-based credit unions may, of course, already serve all senior citizens and retired persons in the community, and thus, service by community credit unions is not at issue.) On the other hand, the more limited proposals do not serve the important public policy goal of providing maximum opportunity for senior citizens and/or retired persons to obtain basic financial services as conveniently and economically as possible. The NCUA Board is committed to the notion that Federal credit unions can and should play an important part in fulfilling this obligation. The public comment record on this issue shows that Federal credit unions agree.

Accordingly, the Board has determined to formally state a policy of encouraging Federal credit unions to bring associations of senior citizens and/or retired persons within their fields of membership, and to sponsor and assist in the formation of such associations where they do not exist. The Board would hope that implementation of such a policy will become an important credit union initiative, with as little red tape and government interference as possible.

To facilitate the carrying out of this policy, the Board has taken the following important steps. First, the Board has determined that in the case of senior citizen and retiree associational groups, an exception will be created to standard associational chartering policy: the standard rule is that a primary purpose of the formation of an association may not be to provide credit union membership to the association members. That rule will not apply in the case of charter amendments to add senior citizens and/or retiree groups. In addition, the provisions of Section II, Chapter 4 of the NCUA Chartering Manual, concerning associational groups, will not apply to charter amendments to add senior citizens and/or retiree groups. These provisions, which include for example the requirement that a constitution, bylaws and financial statement be filed with NCUA as part of the application for an associational group charter, are in large part directed at determining the economic feasibility of the credit union and are of less concern when considering the addition of an associational group to an established credit union. Also, such provisions would interfere with the goal of facilitating formation of senior citizens and/or retiree associations and providing credit union services to these groups, with a minimum of bureaucracy and red tape. Details concerning the formation of these associations will be left to the sponsors and association members. Once an association has been formed, it can be expeditiously processed by the NCUA regional office for addition to an FCU's field of membership pursuant to the normal procedures for multiple group charter amendments. The NCUA Board believes that sponsoring and assisting in the formation of senior citizen and retiree groups by Federal credit unions is in the public interest. Senior citizens and retirees have always been an important segment of the credit union population, especially in their capacity as volunteers. It is the Board's belief that increased FCU

accessibility to senior citizens and retirees will benefit the credit union industry as well as provide a needed service to a greater number of people who do not presently have credit union service available to them.

IRPS 84-1 -- Membership in Federal Credit Unions

I. Purchase of Loans of Liquidating Credit Unions Under Section 107(14)

Section 107(14) of the FCU Act, 12 U.S.C. §1757(14), authorizes FCU's to purchase assets and to assume liabilities of other credit unions, subject to regulations of the Board. The Board interprets this provision to authorize it to allow FCU's to provide customer services to members whose loans are purchased or whose share accounts are assumed pursuant to the provision. In cases of liquidation it is especially important, in order to protect the interests of the National Credit Union Share Insurance Fund, to utilize this authority. Accordingly, it shall be the policy of the Board that an FCU which purchases the loans of a liquidating credit union may offer full membership rights and services to the borrowers whose loans it has purchased. In cases where the borrower is converted to membership status, section 107(14) shall be considered the operative provision and the five percent limit of Section 107(13) shall not apply.

II. Bylaws Affecting Field of Membership

Two of the Standard Federal Credit Union Bylaws (Bylaws) apply to field of membership policy. Section 5 of Article II of the Bylaws is the "once a member, always a member" Bylaw. It provides that the board of directors of each FCU may resolve that members who are no longer within the field of membership may retain membership if they meet reasonable minimal standards set by their board of directors. The second Bylaw affecting field of membership is Section 2(a) of Article XVIII. This is the definition of immediate families. Not all FCU's include immediate family members within their field of membership. To be included, "members of their immediate families" must appear in Section 5 of the FCU's charter. A standard Bylaw amendment to Section 2(a) of Article XVIII allows FCU's adopting it flexibility in defining "members of their immediate families." With this Bylaw amendment, each FCU may define for itself the phrase "members of their immediate families."

III. Multiple Group Charters

In connection with new charters, charter amendments, conversions and mergers, the Board has delegated to the regional directors the authority to approve FCU fields of membership including more than one distinct group. The regional directors

also have the authority to remove new groups added to a credit union if those groups are not being satisfactorily served. In all cases of disapproval of a multiple group charter application or removal of a group, the regional director will advise the applicant of the reason(s) for disapproval or removal and of the right to appeal the decision to the NCUA Board. Pursuant to Section 109 of the FCU Act, 12 U.S.C. §1759, the Board has recognized two types of multiple group fields of membership. The first type involves groups that have common bonds of occupation or association. The second type covers groups any portion of which is community based. The two types of multiple groups are addressed separately.

Occupational or Associational Based

In order for this type of multiple group charter to be approved, each occupational or associational group that becomes a part of the larger group must have its own common bond. Five additional criteria must be satisfied before a regional director can approve a multiple group charter.

1. All affected groups have requested service from the applicant;
2. The applicant can provide credit union service to each group;
3. The application is economically feasible and advisable;
4. The applicant indicates whether affected groups are eligible for membership or are being served by any other credit union. If groups are eligible for membership or are being served by another credit union, they must provide justification why they no longer desire that eligibility or continued service.
5. All of the groups must be within the operational area of the home or a branch office of the Federal credit union. Operational area is an area surrounding the home or a branch office that can be reasonably served by the applicant as determined by the regional director. A branch office means any office of a Federal credit union where an employee accepts payment on shares and disburses loans. For purposes of this definition, disbursing loans includes making advances on lines of credit but does not include extensions of overdraft protection credit.

Community Based

In order for this type of multiple group charter to be approved, the combined field of membership is limited to a well-defined neighborhood, community or rural district, as mandated by Section 109 of the FCU Act. Any group or individual that is within the defined neighborhood, community or rural district, unless specifically excluded in the credit union charter, is eligible for membership in the community FCU. The approval of the NCUA Board is required if the population of the area exceeds 35,000. Should a group outside of the well-defined neighborhood, community or rural district seek to attain membership, that group must be geographically situated so that it and the community FCU

are also within a more broadly defined well-defined neighborhood, community or rural district. The larger area must constitute a geographical area that could statutorily be established as a community credit union. Once it is determined that the larger defined area exists, two options are available. The first option is that a larger defined area will become the boundary for the community FCU. All groups and individuals within the larger defined area will now be eligible for membership. Under the first option, NCUA Board approval is required if the larger defined area's population exceeds 35,000. The second option is that only groups seeking membership will be added to the community charter. The FCU boundaries will not be expanded to include all groups in the community charter. Under this second option, the five criteria set out under Occupational or Associational Based must be met.

IV. Service to Senior Citizens and/or Retirees

Pursuant to Section 109 of the Federal Credit Union Act, senior citizen and/or retiree organizations may be added to Federal credit union fields of membership in compliance with the Multiple Group Charter policy set out above. The definitions of senior citizen and/or retiree are left to each individual organization. Federal credit unions may sponsor or assist in the formation of senior citizen and/or retiree organizations in their operational area. Section II, Chapter 4 of the Chartering and Organizing Manual for Federal Credit Unions does not apply to senior citizen and/or retiree organizations that wish to join an established Federal credit union. Such organizations may be formed with a primary purpose of providing eligibility for FCU service to the organizations and their members.

The NCUA Board finds that compliance with the above guidelines will result in fields of membership that meet the membership requirements of Section 109 of the FCU Act, 12 U.S.C. §1759.

IRPS 82-3 and IRPS 83-2 are hereby cancelled and superseded by this interpretive ruling and policy statement.

List of Subjects in 12 C.F.R. Part 701 Credit Unions

Rosemary Brady
ROSEMARY BRADY
Secretary of the Board

Date: 11/15/84