the existing loan is not being refinanced, the new lender policy will insure only the amount of the subsequent loan).

(b) *Title services required in connection with assumptions.* These regulations are contained in part 1965, subparts A, B, and C, of this chapter as appropriate for the loan type.

§§ 1927.60–1927.99 [Reserved]

§ 1927.100 OMB control number.

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0147. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 1.5 hours per response, with an average of .38 hours 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 this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Ag Box 7630, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575–0147), Washington, D.C. 20503. You are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Dated: February 25, 1996.

Jill Long Thompson,

Under Secretary, Rural Economic and Community Development.

Dated: February 28, 1996.

Eugene Moos,

Under Secretary, Farm and Foreign Agriculture Services.

[FR Doc. 96–6698 Filed 3–21–96; 8:45 am]

BILLING CODE 3410–07–U

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 1669–94]

RIN 1115–AD77

Waiver of Certain Types of Visas

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (the Service) regulations to permit district directors, in individual cases, to waive nonimmigrant visa or passport requirements under section 212(d)(4)(A) of the Immigration and Nationality Act (the Act), if satisfied that a nonimmigrant alien is unable to present these documents because of an unforeseen emergency. The rule clarifies that carriers are liable for fines imposed under section 273 of the Act for bringing nonimmigrants to the United States who do not have a valid passport or nonimmigrant visa, or border crossing identification card, even if a waiver of these documents is granted by the district director at the time of admission into the United States. This change was necessary to conform the language of the regulations with the statutory provision that imposes fine liability on a carrier which transports an alien to the United States without the proper documentation.

EFFECTIVE DATE: March 22, 1996.

FOR FURTHER INFORMATION CONTACT: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., room 7228, Washington, DC 20536, telephone number (202) 616–7499.

SUPPLEMENTARY INFORMATION: Section 212(d)(4)(A) of the Act allows the Attorney General to waive the requirement that a nonimmigrant alien be in possession of a visa or passport if he or she is unable to present the necessary documents due to an unforeseen emergency. Section 273(b) of the Act imposes a fine upon a carrier for violations of section 273(a) of the Act. Section 273(a) of the Act requires carriers bringing aliens into the United States to ensure that its passengers are in possession of a valid passport and unexpired visa, if a visa is required under the Act or regulations

The regulations at 8 CFR 212.1(g) had the unintended effect of relieving the carrier of fine liability if the district director granted a waiver of the passport or nonimmigrant visa requirement. In *Air BVI Ltd., Flight BL 410* (BIA Unpublished Decision No. SAJ 10/50.670, August 26, 1992), the Board of Immigration Appeals (the Board) characterized the regulation as creating a ''blanket'' waiver because of language in the regulation stated that ''a visa * * * is not required.'' The Board based its decision on whether an alien's admission with a waiver relieved the carrier of liability for a fine by interpreting the regulations in effect at the time involved. *Matter of Plane ''CUT–604''*, 7 I&N 701 (BIA 1958). If the regulations creates a blanket waiver, by stating that no visa is required, no fine liability is incurred by the carrier. By contrast, a regulation that provides for a discretionary waiver of the visa and passport requirements to be granted to a nonimmigrant on a case-by-case basis will not relieve the carrier of fine liability.

This rule removes the language, ''[a] visa and a passport are not required of a nonimmigrant'' so that even when the district director waives the documentary requirements in the exercise of his or her discretion, on a case-by-case basis, and admits such a nonimmigrant to the United States, such admission will not eliminate the carrier's fine liability for bringing that alien to the United States without proper documentation (*Matter of Plane ''CUT–604''*). The fine procedures at 8 CFR 280 remain applicable and require no change.

This rule further amends § 212.1(g) by removing the provision regarding waivers of the visa requirement granted pursuant to section 212(d)(4)(A) of the Act in the case of a national or resident of Cuba. This action is being taken because this provision is obsolete.

On April 14, 1995, at 60 FR 19001–19002, the Immigration and Naturalization Service (the Service) published a proposed rule with request for comments in the Federal Register, in order to correct this loophole in the regulations which allowed carriers to transport improperly documented aliens to the United States without incurring fines under section 273 of the Act. Interested persons were invited to submit written comments on or before June 13, 1995. The following is a discussion of those comments received by the Service and the Service's response.

Discussion of Comments on the Proposed Rule

The Service received four comments on the proposed rule. One commenter claimed the proposed change ''will have an effect repugnant to the intent of Congress, the existing regulation of the Attorney General and the intended effect of the current regulation.'' It must be emphasized that the Service policy of strictly enforcing the fine provisions of section 273 of the Act in appropriate cases is a continuation of a more than 70-year-old policy of carrying out Congress' intent to hold carriers responsible for passengers they have transported to the United States. The Board and the courts have consistently held that carriers must exercise reasonable diligence in boarding their passengers for transport to the United States and are subject to administrative fines for failure to do so, e.g., *Matter of*

Eastern Airlines, Inc., Flight #798, Int. Dec. 3110 (BIA 1989); *Matter of M/V Guadalupe,* 13 I&N Dec. 67 (BIA 1968); *New York & Porto Rico S.S. Co.* v. *United States,* 66 F.2d 523, 525 (2d Cir. 1933).

The imposition of administrative fines in appropriate cases has long been an important tool in enforcing our immigration laws and safeguarding our borders. In enacting both section 273 of the Act of 1952 as well as section 16 of the Immigration Act of 1924, the precursor of section 273, Congress intended to make the carrier ensure compliance with the requirements of the respective statutory provisions. *See* Joint Hearings on the Revision of Immigration, Naturalization, and Nationality Laws, Senate and House Subcommittees on the Judiciary, Testimony of Stuart G. Tipton, General Counsel, Air Transport Association of America at p. 294 (March 14, 1951); *Matter of M/V ''Runaway'',* 18 I&N Dec. at 128 (citing section 273 cases). Indeed, in enacting section 273 of the Act, Congress strengthened the previous penalty provisions, which only applied to carriers unlawfully transporting immigrants to this country, to apply to the unlawful transport of nonimmigrants as well. *See Matter of S.S. Greystoke Castle and M/V Western Queen,* 6 I&N Dec. 112, 114–15 (BIA, AG 1954); Legal Opinion of the INS General Counsel, 56336/273a at 6 (Sept. 3, 1953).

The commenter further claims that ''Congress clearly contemplated situations whereby nonimmigrant aliens would need to travel to the United States without the formality of obtaining a passport or visa by enacting INA 212(d)(4)(A).'' Congress indeed contemplated a situation where this would arise. Nevertheless, the commenter failed to mention that a passport or visa may be waived only by ''the Attorney General and the Secretary of State acting jointly.'' Congress at no time envisioned that carrier representatives would be responsible for determining admissibility of aliens to the United States at the port of embarkation *for any reason* without prior authority from the Attorney General or Secretary of State.

One commenter wrote that ''the motivation for the proposed rule is to circumvent the holding in *Matter of ''Flight SR–4'',* 10 I&N Dec. 197 (BIA 1963) and *Air BVI, LTD., Flight BL 410,* SAJ 10/50.670, Decided by the Board August 26, 1992.'' The Service is not trying to circumvent these decisions; rather it is clarifying the regulation by amending it to conform to Congressional intent.

Regarding fines even though an alien was subsequently admitted, a 5th Circuit Court stated, in part:

> And intrinsically, [the] 1952 Act which included for the first time nonimmigrant aliens contains terms indicating quite persuasively that Congress carefully distinguished between penalties against the carrier and the ultimate admission of the aliens. *The Peninsular & Occidental Steamship Company* versus *The United States,* 242 F. 2d 639 (5 Cir. 1957). See also the conclusions of the BIA in such cases as *Matter of SS Florida,* 5 I&N Dec. 85 (BIA 1954) and *Matter of Plane ''F–BHSO'',* 9 I&N Dec. 595 (BIA 1962).

The amending of the regulation also parallels the granting of a visa waiver to a lawful permanent resident. In 8 CFR 211.1(b)(3) it reads, in part:

> *Waiver of visas.* An immigrant alien returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad who satisfies the district director in charge of the port of entry that there is good cause for his failure to present an immigrant visa, Form I–151 or I–551, or reentry permit may, upon application on Form I–193, be granted a waiver of that requirement.

The regulation at 8 CFR 212.1(g) is being amended to read, in part:

> Upon a nonimmigrant's application on Form I–193, a district director at a port of entry may, in an exercise of his or her discretion, on a case-by-case basis, waive the documentary requirements, if satisfied that the nonimmigrant cannot present the required documents because of an unforeseen emergency.

The clarification at 8 CFR 212.1(g) will give the Service the ability to exercise discretion to admit improperly documented nonimmigrants while penalizing carriers for the bringing of these aliens to the United States in violation of section 273 of the Act. This is similar to the granting of individual waivers to lawful permanent residents under 8 CFR 211.1(b)(3), which does not relieve the carrier of liability under section 273 of the Act. This has been the intent of Congress since the enactment of the Immigration Act of 1924 which established section 16, the precursor to section 273 of the Immigration Act of 1952. This will clarify any ambiguity in the regulation regarding carriers' liability to ensure the transportation of properly documented aliens to the United States and the imposition of penalties for failure to do so.

One commenter claimed that the regulatory change violates the Regulatory Flexibility Act (5 U.S.C. 605(b)) because the rule will have a significant impact on a substantial number of small entities. The Service disagrees. The number of aliens entering the United States without documentation for unforeseen emergent reasons is sufficiently low that there is no likely harm to any small carrier. According to the Department of State, very few aliens apply for emergency visa waivers. Furthermore, fines are not imposed on carriers that have properly screened their passengers for proper documentation required to enter the United States. These penalties are imposed only for those cases where the carrier has failed to properly screen its passengers and permitted improperly documented aliens to board its aircraft or vessel. No carrier, whether small or large, need suffer any penalties under section 273 of the Act if it properly screens its passengers. To this end, the Service has and will continue to conduct training for carriers upon request to improve a carrier's screening procedures and thereby reducing its fines under section 273 of the Act.

In addition, carriers are having their fines burden reduced as a direct result of the passage of the Immigration and Nationality Technical Corrections Act of 1994, Public Law 103–416, which was signed by the President on October 25, 1994. Section 209(a)(6) Pub. L. 103–416 contained a technical amendment which added section 273(e) to the Act. The addition of section 273(e) to the Act permits the Service to reduce, refund, or waive fines under section 273 of the Act pursuant to such regulations as the Attorney General shall prescribe in cases in which: (1) The carrier demonstrates that it had screened all passengers on the vessel or aircraft in accordance with procedures prescribed by the Attorney General, or (2) circumstances exist that the Attorney General determines would justify such reduction, refund, or waiver. The new legislation, corresponding regulations, and a Memorandum of Understanding (MOU) to be signed with individual carriers, will enable the Service to reduce, refund, or waive a fine imposed under section 273 of the Act for a carrier that demonstrates successful screening procedures by achieving satisfactory performance in the transportation of properly documented aliens to the United States. The Service will reward those carriers that follow the terms of the legislation or MOU and continue to impose financial penalties on carriers that fail to properly screen passengers. Increased carrier training and increased carrier cooperation with the Service are also expected to contribute to a reduction in the arrival of improperly documented aliens to the United States. Regulations regarding fines mitigation will be published as a proposed rule,

with comment period, in the Federal Register.

The commenter also claims that the proposed rule constitutes a ''significant regulatory action.'' The Service does not agree. This rule clarifies § 212.1(g) to conform to Congressional intent on the boarding of improperly documented aliens. In spite of the Board's holdings to the effect that the old regulation did not allow the Service to fine a carrier for bringing nonimmigrants to the United States without the required documents when a visa waiver is subsequently granted at the port of entry, the Board has never held that the carrier was not liable for fines in these circumstances under section 273 of the Act. Consequently, this rule simply amends the language to conform to Congressional intent, as recognized by the Board.

The commenter correctly states that ''the legitimate goal of the Service is to protect the borders of the United States but only to the extent authorized by Congress and the Attorney General.'' He incorrectly states ''no national security concern * * * would be served by the proposed change.'' The Service disagrees with this assertion. The Service is charged with continually encouraging carriers to properly screen their passengers prior to embarkation for the United States. Proper screening by trained carrier personnel overseas can and should prevent the arrival to the United States of aliens not in possession of proper documentation. Travel to the United States should be accomplished through the orderly procedures presently in place to ensure a legal flow of immigrants and nonimmigrants. Furthermore, a carrier cannot rely on the passenger's urgent need to travel on short notice, since considerations of personal expediency do not constitute due diligence contemplated by the statute (*Matter of Aircraft ''VT DJK''*, 12 I. & N. Dec. 267 (BIA 1967).

One commenter claimed it ''defied logic [in cases where] * * * the [d]istrict [d]irector was satisfied that the alien was unable to present the required documents and, therefore, found good cause to grant a waiver'' that the Service should fine the carrier. The reason that most waivers are given in the first place is not so much that the district director was satisfied that the alien was unable to present the required documents, but rather that the Service showed compassion to the alien for the mistake of the carrier in boarding the alien and, further, determined that returning the alien to his or her port of embarkation would impose a significant hardship on the alien. This rule will permit the Service to continue to grant visa waivers in cases involving aliens not in possession of proper documentation to enter the United States, when otherwise admissible, but properly fine the carrier for allowing the alien to arrive in the United States in the first place.

One commenter claims that this rule will have an adverse effect on family well-being. Another commenter stated ''the proposed rule will adversely affect the travelling public and reflect negatively upon the Service and air carriers. * * *'' The Service disagrees. The Department of State and the Service already have in place the proper procedures which aliens, in emergent circumstances, may utilize to obtain authorization for travel to the United States without a visa or passport. The Service does not perceive that family well-being will be affected whatsoever by this rule. Aliens who are not properly documented for travel to the United States must obtain permission from the Department of State and the Service before boarding a carrier. Accordingly, a carrier should not, under any circumstances, board an improperly documented alien without prior authorization from the Department of State and the Service.

The commenter further claims that the carrier should not be ''penalized for showing the same compassion by transporting the passenger that the Service evidences by issuing a waiver.'' Again the service disagrees. The decision to admit an alien without proper documentation is clearly vested in the Attorney General and the Secretary of State and not in the carrier.

One commenter is concerned about the Service's policy of proceeding with fines against carriers in certain cases involving improperly documented aliens arriving because ''emergency medical treatment, for funerals, for visiting critically injured or dying relatives, and other 'unforeseen emergencies.'' The commenter further claims that ''a carrier must have some latitude to determine that the passenger is travelling due to a valid emergency, such as a death in the family, a medical emergency, or the loss of all documents due to robbery, etc.'' The Service again disagrees. The statute vests discretionary authority in the Service and not in the carrier. Furthermore, as stated previously, procedures presently exist for aliens to obtain emergency waivers of both passport and visa from the Department of State with concurrence from the Service. According to section 212(d)(4) of the Act, as amended by the Immigration Act of 1990 (Pub. L. 101–649, dated November 29, 1990, 104 Stat. 5076), ''[e]ither or both of the requirements of paragraph (7)(B)(i) of subsection (a) may be waived by the Attorney General and the Secretary of State acting jointly (A) on the basis of unforeseen emergency in individual cases. * * *''

Furthermore, § 41.3 of 22 CFR states:

Under the authority of INA 212(d)(4), the documentary requirements of INA 212(a)(7)(B)(i)(I), (i)(II) may be waived for any alien in whose case the consular officer serving the port or place of embarkation is satisfied after consultation with, and concurrence by, the appropriate immigration officer, that the case falls within any of the following categories:

* * *

(d) *Emergent circumstances; visa waiver.* An alien well and favorably known at the consular office, who was previously issued a nonimmigration visa which has expired, and who is proceeding directly to the United States under emergent circumstances which preclude the timely issuance of a visa.

The procedures for aliens seeking a passport or visa waiver for emergent reasons are also described in Title 9 of the *Foreign Affairs Manual* (FAM) part 41, section 3, in part, as follows:

Waivers by Joint Action of Consular and Immigration Officers of Passport and/or Visa Requirements

Under the authority of INA 212(d)(4), the documentary requirements of INA 212(a)(7)(B)(i)(I), (i)(II), may be waived for any alien in whose case the consular officer serving the port or place of embarkation is satisfied after consultation with, and concurrence by, the appropriate immigration officer, that the case falls within any of the following categories:

(a) Residents of Foreign Contiguous Territory; Visa and Passport Waiver

* * *;

(b) Aliens for Whom Passport Extension Facilities Are Unavailable; Passport Waiver

* * *;

(c) Aliens Precluded From Obtaining Passport Extensions by Foreign Government Restrictions; Passport Waiver

* * *;

(d) Emergent Circumstances; Visa Waiver

An alien well and favorably known at the consular office, who was previously issued a nonimmigrant visa which has expired, and who is proceeding directly to the United States under emergent circumstances which preclude the timely issuance of a visa.

(e) Members of Armed Forces of Foreign Countries; Visa and Passport Waiver

* * *;

(f) Landed Immigrants in Canada; Passport Waiver

* * *;

(g) Authorization to Individual Consular Office; Visa and/or Passport Waiver

An alien within the district of a consular office which has been authorized by the Department, because of unusual circumstances prevailing in that district, to join with immigration officers abroad in waivers of documentary requirements in specific categories of cases, and whose case falls within one of those categories.

Notes

N1 Transporting Undocumented Aliens to United States

Posts must inform carriers inquiring about transporting an undocumented alien that they would be subject to a fine unless such alien is within one of the categories listed in 22 CFR 41.2 or 41.3.

N2 Areas of Responsibility of Immigration Officers

Consular officers shall address requests for concurrence in waivers of passport and visa requirements to the immigration officer in charge, in care of the appropriate post as indicated in 9 FAM Part IV.

N3 Furnishing Information Concerning Waivers to Immigration Officers

* * *

(7) A brief summary of the emergent circumstances surrounding the case which must include information indicating that all of the requirements of the subparagraph of 22 CFR 41.3 under which the waiver is recommended have been met; and

* * *

N4 Issuing Documents to Waiver Beneficiaries

* * *.

Aliens in emergent circumstances can and should obtain a visa or a waiver of visa, if required, prior to boarding. These procedures are in place to ensure that aliens are not allowed to arrive in the United States without first being properly screened, unless waived by statute.

The Service respectfully declines the invitation of one commenter to ''develop an agreed set of criteria to define an unforeseen emergency.'' There already exist procedures an alien must follow to apply for entry into the United States under emergent circumstances as previously explained. The Service expects aliens to follow these emergency procedures to obtain the proper documentation to enter the United States if they lack the necessary documentation. In instances of emergent circumstances and travel requests occurring after the normal consulate business hours, consular officers are available for visa or passport waiver authorization on a case-by-case basis. To allow carriers the authority to determine admissibility of aliens not in possession of proper documentation at the port of embarkation would seriously undermine the enforcement of the Act and the security of the United States, and would circumvent existing immigration laws and regulations. As the carrier organizations admit, only immigration officers can determine the admissibility of an alien to the United States. The Service is not in a position to abdicate its authority or responsibility to safeguard the borders of the United States as Congress has mandated.

One commenter stated that the Service should never consider granting a visa waiver under emergent circumstances. The commenter states that ''under no circumstances or unforeseen emergencies * * * should [a government body] be authorized to grant entry into the United States [to any alien] without valid documentation.'' Furthermore, the same commenter concluded, ''in the event that someone attempts to enter into the United States without proper credentials, they should be fined and deported to the place of original entry. * * *'' The statute authorizes a waiver of the documentary requirements in appropriate circumstances. In the case of a nonimmigrant who is otherwise admissible, a favorable exercise of that discretion is often appropriate to avoid unnecessary hardship.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have significant economic impact on a substantial number of small entities. This rule merely removes any ambiguity between the current regulations and section 273 of the Act.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirement contained in this rule has been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects in 8 CFR Part 212

Aliens, Documentation, Nonimmigrant, Passport and visas, Waivers.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. In § 212.1, paragraph (g) is revised to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(g) *Unforeseen emergency.* A nonimmigrant seeking admission to the United States must present an unexpired visa and a passport valid for the amount of time set forth in section 212(a)(7)(B) of the Act, or a valid border crossing identification card at the time of application for admission, unless the nonimmigrant satisfies the requirements described in one or more of the paragraphs (a) through (f) or (i) of this section. Upon a nonimmigrant's application on Form I–193, a district director at a port of entry may, in the exercise of his or her discretion, on a case-by-case basis, waive the

documentary requirements, if satisfied that the nonimmigrant cannot present the required documents because of an unforeseen emergency. The district director or the Deputy Commissioner may at any time revoke a waiver previously authorized pursuant to this paragraph and notify the nonimmigrant in writing to that effect.

* * * * *

Dated: December 11, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 96–7039 Filed 3–21–96; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Federal Credit Union Field of Membership and Chartering Policy

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

ACTION: Final rule and final amendments to Interpretive Ruling and Policy Statement 94–1 (''IRPS 96–1'').

SUMMARY: The NCUA Board is updating the references to federal credit union chartering, field of membership modifications and conversions. The NCUA Board is issuing amendments to its field of membership policies. One change will require senior citizen and retiree groups to meet the same conditions as other associational groups in order to qualify for a federal credit union charter or addition to an existing charter through a field of membership amendment. The Board is also issuing five amendments to clarify operational issues. The amendments clarify: The application of field of membership requirements to mergers; the streamlined expansion procedure; the documentation requirements for low-income communities; the use of surveys to support a community common bond; and appeal procedures.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

In 1984, NCUA adopted a policy which permitted federal credit unions (FCUs) to accept senior citizen and retiree members through the formation of associations. The only requirement for adding these associations to a credit union charter was a written request from the FCU to the NCUA; no request from the group or copy of the association's charter or bylaws was necessary. As a result, many FCUs added senior citizen/retiree associations to their charters. Subsequent policy statements, including Interpretive Ruling and Policy Statement 94–1 (IRPS 94–1) (the ''Chartering Manual''), continued this policy. 59 FR 29066 (June 3, 1994).

In 1994, two bank trade associations and six Texas commercial banks filed suit against Communicators FCU of Houston, Texas, as a result of several additions to the FCU's field of membership. The suit challenged, among other additions, the 1994 addition of a senior citizen/retiree group formed solely for the purpose of acquiring credit union service. While upholding the other field of membership additions, the court vacated the addition of the senior citizen/retiree association and permanently enjoined NCUA from adding any similar associations to the FCU. *Texas Bankers Association, et al.* v. *NCUA, et al.*, 1995 WL 328319 (D.D.C., May 31, 1995) (the ''*Communicators FCU*'' decision). On September 28, 1995, partly in response to the *Communicators FCU* decision, the Board issued proposed amendments to the Chartering Manual. 60 Fed. Reg. 51396 (October 4, 1995).

B. Comments

Seventy comments were received. Comments were received from thirty-four federal credit unions, two state chartered credit unions, seven state credit union leagues and three national credit union trade associations. The comments were generally positive and supported most of the proposed amendments.

The Board also received comments from twenty-five banking associations. Briefly summarized, the bank commenters support NCUA's proposed amendment to require senior citizen/retiree groups to meet the same conditions as other associational groups before seeking to charter or join a federal credit union. The bank commenters argue against permitting federal credit unions that have adopted the ''once a member, always a member'' bylaw to continue serving members based on their membership in the senior citizen group. Many of the bank commenters also request that NCUA re-examine its policies relating to all forms of select group field of membership expansions.

The Senior Citizen and Retiree Association Policy

The Board proposed to modify its senior citizen/retiree policy to require such groups to meet associational common bond requirements before seeking to join or charter an FCU. Twenty-three commenters agree with NCUA that senior citizen and retiree groups should meet the same criteria as other associational groups before seeking to charter or join a federal credit union.

Sixteen commenters disagreed with the Board's proposal. Seven of these commenters believe that such groups are an underserved segment of the population. They believe that a formal organization with bylaws and officer and membership requirements should be sufficient for senior citizen associations. Two commenters recommend that NCUA treat senior citizen groups the same as low-income groups. Two commenters state that the conversion of an existing group to a bona fide association should not require that the association be completely divorced from the credit union. They suggest that a senior citizen/retiree group could have bylaws that permit the group to have the same directors as the credit union and conduct their annual meeting concurrently with the credit union's annual meeting. One commenter suggests that the final amendments clarify that a credit union may help senior groups meet the associational common bond requirement.

The Board believes the policy modification is an appropriate response to the *Communicators FCU* decision and is adopting the proposed amendment in final. In determining whether a group satisfies this common bond requirement, NCUA will consider the totality of the circumstances, such as whether the members pay dues, have voting rights, hold office, hold meetings, have a purpose other than to obtain credit union services, whether there is interaction among members and whether the group has its own bylaws. See, Chapter 1, Section II.B. of the Chartering Manual, 59 FR at 29076. Provided operational area requirements are met, senior citizen/retiree associations formed for purposes other than seeking credit union service will qualify to join an existing FCU. The Board is not requiring such associations to have a specific type of internal structure. Moreover, the Board continues to stress that an FCU may assist a senior citizen group to form an association that will qualify under the Chartering Manual.