

shall consider—

(A) the history, financial condition, and management policies of the applicant;

(B) the economic advisability of insuring the applicant without undue risk of the fund;

(C) the general character and fitness of the applicant's management;

(D) the convenience and needs of the members to be served by the applicant; and

(E) whether the applicant is a co operative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes.

(2) The Board shall disapprove the application of any credit union for insurance of its member accounts if it finds that its reserves are inadequate, that its financial condition and policies are unsafe or unsound, that its management is unfit, that insurance of its member accounts would otherwise involve undue risk to the fund, or that its powers and purposes are inconsistent with the promotion of thrift among its members and the creation of a source of credit for provident or productive purposes.

(d) **Certificate of insurance.**—Upon the approval of any application for insurance, the Board shall notify the applicant and shall issue to it a certificate evidencing the fact that it is, as of the date of issuance of the certificate, an insured credit union under the provisions of this subchapter.

(e) **Prohibition on certain associations.**—(1) **In general.**—No insured credit union may be sponsored by or accept financial support, directly or indirectly, from any Government-sponsored enterprise, if the credit union includes the customers of the Government-sponsored enterprise in the field of membership of the credit union.

(2) **Routine business financing.**—Paragraph (1) shall not apply with respect to advances or other forms of financial assistance generally provided by a Government-sponsored enterprise in the ordinary course of business of the enterprise.

(3) **“Government-sponsored enterprise” defined.**—For purposes of this subsection, the term “Government-sponsored enterprise” has the meaning given to such term in section 1404(e)(1)(A) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(4) **Employee credit union.**—No provision of this subsection shall be construed as prohibiting any employee of a Government-sponsored enterprise from becoming a member of a credit union whose field of membership is the employees of such enterprise.

## §1782.

## §202

### **Administration of insurance fund.—**

#### **(a) Reports of condition.—**

(1) Each insured credit union shall make reports of condition to the Board upon dates which shall be selected by it. Such reports of condition shall be in such form and shall contain such information as the Board may require. The reporting dates selected for reports of condition shall be the same for all insured credit unions except that when any of said reporting dates is a nonbusiness day for any credit union the preceding business day shall be its reporting date. The total amount of the member accounts of each insured credit union as of each reporting date shall be reported in such reports of condition in accordance with regulations prescribed by the Board. Each report of condition shall contain a declaration by the president, by a vice president, by the treasurer, or by any other officer designated by the board of directors of the reporting credit union to make such declaration, that the report is true and correct to the best of such officer's knowledge and belief. Unless such requirement is waived by the Board, the correctness of each report of condition shall be attested by the signatures of three of the officers of the reporting credit union with the declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct.

(2) The Board may call for such other reports as it may from time to time require.

(3) The Board may require reports of condition to be published in such manner, not inconsistent with any applicable law, as it may direct. Any insured credit union

which maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to submit or publish any report required under this subsection or section 1756 of this title, within the period of time specified by the Board, or submits or publishes any false or misleading report or information, or inadvertently transmits or publishes any report which is minimally late, shall be subject to a penalty of not more than \$2,000 for each day during which such failure continues or such false or misleading information is not corrected. The insured credit union shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late. Any insured credit union which fails to submit or publish any report required under this subsection or section 1756 of this title, within the period of time specified by the Board, or submits or publishes any false or misleading report or information, in a manner not described in the 2nd preceding sentence shall be subject to a penalty of not more than \$20,000 for each day during which such failure continues or such false or misleading information is not corrected. Notwithstanding the preceding sentence, if any insured credit union knowingly or with reckless disregard for the accuracy of any information or report described in such sentence submits or publishes any false or misleading report or information, the Board may assess a penalty of not more than \$1,000,000 or 1 percent of total assets of such credit union, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected. Any penalty imposed under any of the 4 preceding sentences shall be assessed and collected by the Board in the manner provided in section 1786(k)(2) of this title (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section. Any insured credit union against which any penalty is assessed under this subsection shall be afforded an agency hearing if such insured credit union submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 1786(j) of this title shall apply to any proceeding under this subsection.

(4) The Board may accept any report of condition made to any commission, board, or authority having supervision of a State-chartered credit union and may furnish to any such commission, board, or authority reports of condition made to the Board.

(5) Reports required under subchapter I of this chapter shall be so prepared that they can be used for share insurance purposes. To the maximum extent feasible, the Board shall use for insurance purposes reports submitted to State regulatory agencies by State-chartered credit unions.

(6) **Audit requirement.**—(A) **In general.**—Before the end of the 120-day period beginning on August 9, 1989, and notwithstanding any other provision of Federal or State law, the Board shall prescribe, by regulation, audit standards which require an outside, independent audit of any insured credit union by a certified public accountant for any fiscal year (of such credit union)—

(i) for which such credit union has not conducted an annual supervisory committee audit;

(ii) for which such credit union has not received a complete and satisfactory supervisory committee audit; or

(iii) during which such credit union has experienced persistent and serious recordkeeping deficiencies, as determined by the Board.

(B) **Unsafe or unsound practice.**—The Board may treat the failure of any insured credit union to obtain an outside, independent audit for any fiscal year for which such audit is required under subparagraph (A) or (D) as an unsafe or unsound practice within the meaning of section 1786(b) of this title.

(C) **Accounting principles.**—(i) **In general.**—Accounting principles applicable to reports or statements required to be filed with the Board by each insured credit union shall be uniform and consistent with generally accepted accounting principles.

(ii) **Board determination.**—If the Board determines that the application of any generally accepted accounting principle to any insured credit union is not appropriate, the Board may prescribe an accounting principle for application to the credit union that is no less stringent than generally accepted accounting principles.

(iii) **De minimus exception.**—This subparagraph shall not apply to any insured credit union, the total assets of which are less than \$10,000,000, unless

prescribed by the Board or an appropriate State credit union supervisor.

**(D) Large credit union audit requirement.—**

(i) **In general.**—Each insured credit union having total assets of \$500,000,000 or more shall have an annual independent audit of the financial statements of the credit union, performed in accordance with generally accepted auditing standards by an independent certified public accountant or public accountant licensed by the appropriate State or jurisdiction to perform those services.

(ii) **Voluntary audits.**—If a Federal credit union that is not required to conduct an audit under clause (i), and that has total assets of more than \$10,000,000 conducts such an audit for any purpose, using an independent auditor who is compensated for his or her audit services with respect to that audit, the audit shall be performed consistent with the accountancy laws of the appropriate State or jurisdiction, including licensing requirements.

**(7) Report to independent auditor.—(A) In general.**—Each insured credit union which has engaged the services of an independent auditor to audit such depository institution within the past 2 years shall transmit to such auditor a copy of the most recent report of condition made by such credit union (pursuant to this chapter or any other provision of law) and a copy of the most recent report of examination received by such credit union.

**(B) Additional information.**—In addition to the copies of the reports required to be provided to an auditor under subparagraph (A), each insured credit union shall provide such auditor with—

(i) a copy of any supervisory memorandum of understanding with such credit union and any written agreement between the Board or a State regulatory agency and the credit union which is in effect during the period covered by the audit; and

(ii) a report of any action initiated or taken by the Board during such period under subsection (e), (f), (g), (i), (l), or (q) of section 1786 of this title, or any similar action taken by a State regulatory agency under State law, or any other civil money penalty assessed by the Board under this chapter, with respect to—

(I) the credit union; or

(II) any institution-affiliated party.

**(8) Data sharing with other agencies and persons.**—In addition to reports of examination, reports of condition, and other reports required to be regularly provided to the Board (with respect to all insured credit unions, including a credit union for which the Corporation has been appointed conservator or liquidating agent) or an appropriate State commission, board, or authority having supervision of a State-chartered credit union, the Board may, in the discretion of the Board, furnish any report of examination or other confidential supervisory information concerning any credit union or other entity examined by the Board under authority of any Federal law, to—

(A) any other Federal or State agency or authority with supervisory or regulatory authority over the credit union or other entity;

(B) any officer, director, or receiver of such credit union or entity; and

(C) any other person that the Board determines to be appropriate.

**(b) Certified statement.—**

**(1) Statement required.—(A) In general.**—For each calendar year, in the case of an insured credit union with total assets of not more than \$50,000,000, and for each semi-annual period in the case of an insured credit union with total assets of \$50,000,000 or more, an insured credit union shall file with the Board, at such time as the Board prescribes, a certified statement showing the total amount of insured shares in the credit union at the close of the relevant period and both the amount of its deposit or adjustment of deposit and the amount of the insurance charge due to the Fund for that period, both as computed under subsection (c) of this section.

**(B) Exception for newly insured credit union.**—Subparagraph (A) shall not apply with respect to a credit union that became insured during the reporting period.

**(2) Form.**—The certified statements required to be filed with the Board pursuant to this subsection shall be in such form and shall set forth such supporting information as the Board shall require.

(3) **Certification.**—The president of the credit union or any officer designated by the board of directors shall certify, with respect to each statement required to be filed with the Board pursuant to this subsection, that to the best of his or her knowledge and belief the statement is true, correct, complete, and in accordance with this subchapter and the regulations issued under this subchapter.

**(c) Deposit with National Credit Union Share Insurance Fund; amount, return, distribution, etc.**

(1)(A)(i) Each insured credit union shall pay to and maintain with the National Credit Union Share Insurance Fund a deposit in an amount equaling 1 per centum of the credit union's insured shares.

(ii) The Board may, in its discretion, authorize insured credit unions to initially fund such deposit over a period of time in excess of one year if necessary to avoid adverse effects on the condition of insured credit unions.

(iii) **Periodic adjustment.**—The amount of each insured credit union's deposit shall be adjusted as follows, in accordance with procedures determined by the Board, to reflect changes in the credit union's insured shares:

(I) annually, in the case of an insured credit union with total assets of not more than \$50,000,000; and

(II) semi-annually, in the case of an insured credit union with total assets of \$50,000,000 or more.

(B)(i) The deposit shall be returned to an insured credit union in the event that its insurance coverage is terminated, it converts to insurance coverage from another source, or in the event the operations of the fund are transferred from the National Credit Union Administration Board.

(ii) The deposit shall be returned in accordance with procedures and valuation methods determined by the Board, but in no event shall the deposit be returned any later than one year after the final date on which no shares of the credit union are insured by the Board.

(iii) The deposit shall not be returned in the event of liquidation on account of bankruptcy or insolvency.

(iv) The deposit funds may be used by the fund if necessary to meet its expenses, in which case the amount so used shall be expensed and shall be replenished by insured credit unions in accordance with procedures established by the Board.

**(2) Insurance premium charges.—**

(A) **In general.**—Each insured credit union shall, at such times as the Board prescribes (but not more than twice in any calendar year), pay to the Fund a premium charge for insurance in an amount stated as a percentage of insured shares (which shall be the same for all insured credit unions).

(B) **Relation of premium charge to equity ratio of Fund.**—The Board may assess a premium charge only if—

(i) the Fund's equity ratio is less than 1.3 percent; and

(ii) the premium charge does not exceed the amount necessary to restore the equity ratio to 1.3 percent.

(C) **Premium charge required if equity ratio falls below 1.2 percent.**—If the Fund's equity ratio is less than 1.2 percent, the Board shall, subject to subparagraph (B), assess a premium charge in such an amount as the Board determines to be necessary to restore the equity ratio to, and maintain that ratio at, 1.2 percent.

**(D) Fund restoration plans.—**

(i) **In general.**—Whenever—

(I) the Board projects that the equity ratio of the Fund will, within 6 months of such determination, fall below the minimum amount specified in subparagraph (C); or

(II) the equity ratio of the Fund actually falls below the minimum amount specified in subparagraph (C) without any determination under sub-clause (I) having been made,

the Board shall establish and implement a restoration plan within 90 days that meets the requirements of clause (ii) and such other conditions as the Board determines to be

appropriate.

(ii) **Requirements of restoration plan.**—A restoration plan meets the requirements of this clause if the plan provides that the equity ratio of the Fund will meet or exceed the minimum amount specified in subparagraph (C) before the end of the 8-year period beginning upon the implementation of the plan (or such longer period as the Board may determine to be necessary due to extraordinary circumstances).

(iii) **Transparency.**—Not more than 30 days after the Board establishes and implements a restoration plan under clause (i), the Board shall publish in the Federal Register a detailed analysis of the factors considered and the basis for the actions taken with regard to the plan.

**(3) Distributions from Fund required.**—

(A) **In general.**—The Board shall, subject to the requirements of section 1790e(e) of this title, effect a pro rata distribution to insured credit unions after each calendar year if, as of the end of that calendar year—

(i) any loans to the Fund from the Federal Government, and any interest on those loans, have been repaid;

(ii) the Fund's equity ratio exceeds the normal operating level; and

(iii) the Fund's available assets ratio exceeds 1.0 percent.

(B) **Amount of distribution.**—The Board shall distribute under subparagraph (A) the maximum possible amount that—

(i) does not reduce the Fund's equity ratio below the normal operating level; and

(ii) does not reduce the Fund's available assets ratio below 1.0 percent.

(C) **Calculation based on certified statements.**—In calculating the Fund's equity ratio and available assets ratio for purposes of this paragraph, the Board shall determine the aggregate amount of the insured shares in all insured credit unions from insured

credit unions certified statements under subsection (b) of this section for the final reporting period of the calendar year referred to in subparagraph (A).

(4) **Timeliness and accuracy of data.**—In calculating the available assets ratio and equity ratio of the Fund, the Board shall use the most current and accurate data reasonably available.

(d) **Remedy for failure to report; penalty for failure to file certified statement or pay premium; dispute as to deposit or premium charge; prohibition on distribution of assets or dividends while in default.**—

(1) Any insured credit union which fails to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed by it in connection with determining the amount of its deposit or any premium charge for insurance may be compelled to make such report or to file such statement by mandatory injunction or other appropriate remedy in a suit brought for such purpose by the Board against the credit union and any officer or officers thereof. Any such suit may be brought in any court of the United States of competent jurisdiction in the district or territory in which the principal office of the credit union is located.

(2) **Penalty for failure to make accurate certified statement or to pay deposit or premium.**—

(A) **First tier.**—Any insured credit union which—

(i) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to submit any certified statement under subsection (b)(1) of this section within the period of time required or submits a false or misleading certified statement under such subsection; or

(ii) submits the statement at a time which is minimally after the time required, shall be subject to a penalty of not more than \$2,000 for each day during which such failure continues or such false and misleading information is not corrected. The insured credit union shall have the burden of proving that an error was inadvertent or that a statement was inadvertently submitted late.

(B) **Second tier.**—Any insured credit union

which—

(i) fails to submit any certified statement under subsection (b)(1) of this section within the period of time required or submits a false or misleading certified statement in a manner not described in subparagraph (A); or

(ii) fails or refuses to pay any deposit or premium for insurance required under this subchapter, shall be subject to a penalty of not more than \$20,000 for each day during which such failure continues, such false and misleading information is not corrected, or such deposit or premium is not paid.

(C) **Third tier.**—Notwithstanding subparagraphs (A) and (B), if any insured credit union knowingly or with reckless disregard for the accuracy of any certified statement under subsection (b)(1) of this section submits a false or misleading certified statement under such subsection, the Board may assess a penalty of not more than \$1,000,000 or not more than 1 percent of the total assets of the credit union, whichever is less, per day for each day during which the failure continues or the false or misleading information in such statement is not corrected.

(D) **Assessment procedure.**—Any penalty imposed under this paragraph shall be assessed and collected by the Board in the manner provided in section 1786(k)(2) of this title (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section.

(E) **Hearing.**—Any insured credit union against which any penalty is assessed under this paragraph shall be afforded an agency hearing if the credit union submits a request for such hearing within 20 days after the issuance of the notice of the assessment. Section 1786(j) of this title shall apply to any proceeding under this subparagraph.

(F) **Special rule for disputed payments.**—No penalty may be assessed for the failure of any insured credit union to pay any deposit or premium for insurance if—

(i) the failure is due to a dispute between the credit union and the Board over the amount of the deposit or premium which is due from the credit union; and

(ii) the credit union deposits security satisfactory to the Board for payment of the deposit or insurance premium upon final determination of the dispute.

(3) No insured credit union shall pay any dividends on its insured shares or distribute any of its assets while it remains in default in the payment of its deposit or any premium charge for insurance due to the fund. Any director or officer of any insured credit union who knowingly participates in the declaration or payment of any such dividend or in any such distribution shall, upon conviction, be fined not more than \$1,000 or imprisoned not more than one year, or both. The provisions of this paragraph shall not be applicable in any case in which the default is due to a dispute between the credit union and the Board over the amount of its deposit or the premium charge due to the fund if the credit union deposits security satisfactory to the Board for payment of its deposit or the premium charge upon final determination of the issue.

(e) **Recovery of unpaid deposit or premium; limitations.**—The Board, in a suit brought at law or in equity in any court of competent jurisdiction, shall be entitled to recover from any insured credit union the amount of any unpaid deposit or premium charge for insurance lawfully payable by the credit union to the fund, whether or not such credit union shall have made any report of condition under subsection (a) of this section or filed any certified statement required under subsection (b) of this section and whether or not suit shall have been brought to compel the credit union to make any such report or to file any such statement. No action or proceeding shall be brought for the recovery of any deposit or premium charge due to the fund, or for the recovery of any amount paid to the fund in excess of the amount due it, unless such action or proceeding shall have been brought within five years after the right accrued for which the claim is made. Where the insured credit union has made or filed with the Board a false or fraudulent certified statement with the intent to evade, in whole or in part, the payment of its deposit or any premium charge, the claim shall not be deemed to have accrued until the discovery by the Board of the fact that the certified statement is false or fraudulent.

(f) **Penalty for failure to comply with section; court determination of failure; remedies not exclusive.**—Should any Federal credit union fail to make any report of condition under subsection (a) of this section or to file any

certified statement required to be filed under subsection (b) of this section or to pay its deposit or any premium charge for insurance required to be paid under any provision of this subchapter, and should the credit union fail to correct such failure within thirty days after written notice has been given by the Board to an officer of the credit union, citing this subsection and stating that the credit union has failed to make any such report or file any such statement or pay any such deposit or premium charges as required by law, all the rights, privileges, and franchises of the credit union granted to it under subchapter I of this chapter shall be thereby forfeited. Whether or not the penalty provided in this subsection has been incurred shall be determined and adjudged by any court of the United States of competent jurisdiction in a suit brought for that purpose in the district or territory in which the principal office of such credit union is located, under direction of and by the Board in its own name, before the credit union shall be declared dissolved. The remedies provided in this subsection and in subsections (d) and (e) of this section shall not be construed as limiting any other remedies against any insured credit union but shall be in addition thereto.

(g) **Records.**—Each insured credit union shall maintain such records as will readily permit verification of the correctness of its reports of condition, certified statements, and deposit and premium charges for insurance. However, no insured credit union shall be required to retain such records for such purpose for a period in excess of five years from the date of the making of any such report, the filing of any such statement, or the payment of any deposit or adjustment thereof or any premium charge, except that when there is a dispute between the insured credit union and the Board over the amount of any deposit or adjustment thereof or any premium charge for insurance the credit union shall retain such records until final determination of the issue.

(h) **Definitions.**—For purposes of this section, the following definitions shall apply:

(1) **Available assets ratio.**—The term “available assets ratio”, when applied to the Fund, means the ratio of—

(A) the amount determined by subtracting—

(i) direct liabilities of the Fund and contingent liabilities for which no provision for losses has been

made, from

(ii) the sum of cash and the market value of unencumbered investments authorized under section 1783(c) of this title, to

(B) the aggregate amount of the insured shares in all insured credit unions.

(2) **Equity ratio.**—The term “equity ratio”, which shall be calculated using the financial statements of the Fund alone, without any consolidation or combination with the financial statements of any other fund or entity, means the ratio of—

(A) the amount of Fund capitalization, including insured credit unions’ 1 percent capitalization deposits and the retained earnings balance of the Fund (net of direct liabilities of the Fund and contingent liabilities for which no provision for losses has been made); to

(B) the aggregate amount of the insured shares in all insured credit unions.

(3) **Insured shares.**—The term “insured shares”, when applied to this section, includes share, share draft, share certificate, and other similar accounts as determined by the Board, but does not include amounts exceeding the insured account limit set forth in section 1787(k)(1) of this title.

(4) **Normal operating level.**—The term “normal operating level”, when applied to the Fund, means an equity ratio specified by the Board, which shall be not less than 1.2 percent and not more than 1.5 percent.

## §1783.

## §203

### **National Credit Union Share Insurance**

**Fund.**—(a) **Creation; use of fund.**—There is hereby created in the Treasury of the United States a National Credit Union Share Insurance Fund which shall be used by the Board as a revolving fund for carrying out the purposes of this subchapter. Money in the fund shall be available upon requisition by the Board, without fiscal year limitation, for making payments of insurance under section 1787 of this title, for providing assistance and making expenditures under section 1788 of this title in connection with the liquidation or threatened liquidation