

UNITED STATES OF AMERICA
BEFORE THE NATIONAL CREDIT UNION ADMINISTRATION BOARD

In the Matter

SOCIAL SECURITY CREDIT UNION

Docket No. 96-007

Decision and Order on Appeal

This matter comes before the National Credit Union Administration Board (Board) as an appeal by Social Security Credit Union (SSCU) of the Acting Region III Director's grant of Phenix Federal Credit Union's (Phenix's) field of membership addition request. The addition creates an overlap with SSCU.

Background

Phenix is a federally chartered credit union with assets of \$22.5 million headquartered in Atlanta, Georgia. Its field of membership consists primarily of employees of the Department of Health and Human Services, the Department of Education and the Social Security Administration who either work in Region IV of the Social Security Administration or are under the jurisdiction of these agencies in Atlanta, GA. [\[1\]](#) The field of membership also includes 50 other employee groups. Prior to the expansion grant, Phenix had 7,889 members out of a potential membership of 25,590. It is a full service credit union which in addition to its main headquarters in Atlanta has a service center in Atlanta and a branch office in Birmingham, Alabama.

SSCU is a state chartered credit union with assets of \$23.9 million, located in Birmingham, Alabama. Its field of membership consists of employees and organizations of employees of the Social Security Administration offices in metropolitan Birmingham, Alabama. SSCU has 3,740 members out of a potential membership of 7,125. It is also a full service credit union with one main office located in Birmingham, Alabama (in the same building as Phenix's branch) and three service centers in the Birmingham area.

The overlap at issue involves 1,319 Social Security Administration employees of the Southeast Program Service Center (SEPSC). Although located in the same building in Birmingham as other Social Security employees eligible for membership in Phenix, this group was specifically excluded from Phenix's charter. Other Birmingham Social Security employees (Teller Service Center employees [TSC]) were eligible for membership in Phenix, but prior to 1994 they were only being served by SSCU. In September 1994, Phenix opened a branch in the same building as SSCU to service the approximate 500 potential members of the already overlapped TSC which was currently being served by SSCU and had not previously been served by Phenix. Prior to opening the branch, Phenix indicated to NCUA and SSCU that "our intention is to only serve those members who are included in our field of membership under our current charter." NCUA's Region III Director passed those assurances along to the Alabama State Supervisor. Within six months of those representations, Phenix received a request from the AFGE Local 2206 seeking services for its SEPSC employees and initiated the overlap process. On December 8, 1994, SSCU notified Phenix of its objection to the proposed

overlap stating that it did not believe it was “in the best interest of the SSCU membership.” On December 15, 1994, Phenix wrote to the Acting Region III Director requesting approval of the overlap. The arguments advanced in support of the request were that AFGE had requested service for its SEPSC employees, it is unfair that SSCU was granted an overlap by the state to serve its field of membership (the TSC employees) and yet it is unable to serve SSCU’s field of membership and finally, it is confusing to the two employee groups (TSC and SEPSC) who don’t understand why one group gets to join both credit unions and the other group is only eligible for membership in one. On January 6, 1995, the Acting Region III Director wrote to Phenix denying the overlap and advising that if it wished to pursue the matter it would need to provide a letter from the group indicating its desire to obtain membership and a petition signed by a majority of the group’s members stating valid reasons for seeking other credit union services. On January 11, 1995, Phenix asked the Acting Regional Director to reconsider his decision and on January 24, 1995, the Acting Region III Director denied the request based on Phenix’s failure to comply with his earlier request to submit a petition of the members. On March 28, 1995, Phenix submitted the documentation requested by the Acting Regional Director. On April 3, 1995, the Acting Regional Director advised SSCU that based on the petition it was inclined to act favorably on Phenix’s request and wanted to give SSCU the opportunity to provide the Region with valid reasons if it continued to object to the request. On April 21, 1995 and June 13, 1995, the Alabama State Supervisor advised the Acting Region III Director that he objected to the overlap request. On May 3, 1995, SSCU filed its objections to the overlap request. The Region III Director granted the overlap request on May 16, 1995.

On June 14, 1995, SSCU appealed the decision to the NCUA Board citing deficiencies in Phenix’s petition and violations of IRPS 94-1 as its basis for appeal. On July 5, 1995, the Acting Region III Director sent a letter to SSCU’s attorney responding to the issues raised in SSCU’s appeal. On November 5, 1995, the Acting Region III Director sent a memo to the NCUA General Counsel advising him that in light of a recent FOM/overlap decision by the NCUA Board^[2], he was recommending that the NCUA Board reverse his decision in this case. On January 17, 1996, at the invitation of the NCUA Board Secretary, Phenix filed a letter in support of its position.

Overlap Policy^[3] and its Application to this Case

NCUA’s field of membership policy addresses overlaps in general terms. An overlap is defined as “the situation which results when a group is eligible for membership in more than one credit union.” (Chartering Manual at p. A-2). General policy requires that every reasonable effort be made to avoid an overlap. In the event an overlap situation arises, officials of the credit unions involved should attempt to work out the overlap problem themselves. When resolution of an overlap problem is not possible, an overlap can be justified by certain circumstances and may be permitted by the Regional Director. Documentation should be provided, including a petition signed by a majority of the group’s members. Failure of the original credit union to provide quality service, limited participation by group members in the credit union and incidental overlap (the group of persons in question is so small as to have no material effect on the original credit union) may be used to justify an overlap. (Chartering Manual at p.1-14). The Region requested

that factors be articulated by the members when it requested a “petition signed by a majority of the groups members stating valid reasons for seeking other credit union services.” (Emphasis added). In spite of this request, the petition merely stated a desire for dual membership. The Chartering Manual offers no guidance on whether or not an overlap may be considered when none of the articulated factors are present. Clearly, a failure to find any of these factors present should be weighed against the credit union requesting the overlap. The Chartering Manual does offer some additional guidance to the Regional Director. In reviewing an overlap, the Regional Director will consider:

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

Chartering Manual, p.1-14.

The Regional Director must review the facts of each request within the guidelines set forth in the Chartering Manual. The record establishes that a resolution of the issue between the two credit unions was not possible. It also establishes that the overlap did not fall within any of the circumstances that are to be considered as justifying an overlap. The overlapped credit union was providing quality service, participation was good and the overlap would be substantial. The Region concedes this but states in a July 5, 1995, letter to SSCU that these factors were “superseded by the obvious desires of the group for dual membership, the close ties that Phenix has to Social Security Administration employees elsewhere in the Region, the significant overlap that already existed between the two credit unions . . . , the strong support expressed for the overlap by the Regional Commissioner of the Social Security Administration and labor union officials and our conclusion that the overlap would or should not have a significantly detrimental effect on SSCU’s operations.”

The Region’s basis for granting the overlap appears to conflict with the overriding policy in the Chartering Manual that overlaps should be avoided when possible. Many of the reasons cited by the Region as justification for overriding this policy are not persuasive. The Region cites the significant overlap that already existed between the two credit unions. Until 1994, when Phenix opened a branch in Birmingham in the same building as SSCU, the overlap existed in name only. Although those employees had been included in Phenix’s charter since the 1940’s, they had been served primarily by SSCU. Further, when Phenix opened the branch in 1994 to serve the 500 potential members of TSC, it represented that it had no intention of serving or attempting to serve the members of SEPSC. Another reason cited by the Region is the support expressed by the Regional Commissioner of the Social Security Administration that his employees be allowed dual membership, since a majority signed the petition. The Region appeared to discount the strong letters of objection filed by its fellow regulator, the Alabama State Supervisor. The conclusion that the overlap “would or should not have a detrimental effect” is somewhat contrary to a later conclusion reached by the Region in a November 9, 1995, memo that “the effect of the overlap is arguably detrimental to Social Security CU.”

Although the two credit unions are close to equal in assets, Phenix's membership is twice as large and potential membership is almost four times as large as SSCU's. The granting of the overlap results in 100% overlap by Phenix of SSCU's field of membership. Based on the facts presented in this matter, the NCUA Board is not inclined to jeopardize the financial viability of SSCU. Further, the addition violates NCUA's general policy as set forth in IRPS 94-1 that every reasonable effort should be made to avoid an overlap. For these reasons, the NCUA Board reverses the Acting Region III Director's decision granting the overlap.

Reversal and its Effect on the Credit Unions

On May 16, 1995, the Acting Regional Director approved the overlap. In reliance on this approval, Phenix has enrolled over 1,200 new members, hired three employees and purchased \$40,000 in computer equipment and furniture for its Birmingham branch. Rather than penalize current members of Phenix, the NCUA Board believes it would be in the best interest of Phenix and its current members that joined in reliance on the Acting Regional Director's approval of the overlap that if Phenix has adopted the "once a member, always a member" bylaw, it can continue to serve members who had joined based on the overlap approval. Region III should delete SEPSC from Phenix's charter and no new members of this group should be permitted to join.

Order

For the reasons set forth above, it is ORDERED as follows:

The Acting Region III Director's grant of the addition of the Social Security employees of the Southeast Program Service Center in Birmingham, Alabama to Phenix Federal Credit Union is reversed and the appeal of Social Security Credit Union is granted;

The Region III Director is to delete Social Security Employees of the Southeast Program Service Center from Phenix's charter; and

Phenix Federal Credit Union, if it has adopted the "once a member, always a member" bylaw, may continue to serve members of the Southeast Program Service Center who had joined based on the overlap approval, but no new members of this group should be permitted to join.

So Ordered on May 22, 1996, by the National Credit Union Administration Board.

Hattie Ulan
Acting Secretary of the Board

^[1] The charter specifically excludes employees of the Center for Disease Control and the U.S. Penitentiary in Atlanta, GA, and employees of the Southeast Program Service Center (SEPSC) in Birmingham, Alabama.

^[2] In the Matter of AOD FEDERAL CREDIT UNION (AOD), Docket No. 95-003,

August 28, 1995.

[\[3\]](#) NCUA's current chartering and field of membership policies, adopted as Interpretive Ruling and Policy Statement 94-1 (IRPS 94-1) are set forth in the Chartering and Field of Membership Manual (Chartering Manual). The policy regarding overlaps as discussed herein is set forth at pages 1-14 to 1-15 of that manual.