

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: NCUA is proposing to amend its rule on the purchase of assets and assumption of liabilities by federally-insured credit unions to clarify which transfers of assets or accounts require approval by the NCUA Board. NCUA is also seeking comments on the provision governing nonconforming investments by federally-insured, state-chartered credit unions (FISCU's).

DATES: Comments must be received on or before September 27, 2005.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web site: http://www.ncua.gov/news/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include "[Your name] Comments on Proposed Rule Part 741.8" in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

FOR FURTHER INFORMATION CONTACT: Moissette Green, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:

A. Background

The purpose of this amendment is to clarify the scope of § 741.8. This regulation identifies certain transactions that require NCUA approval and some exceptions. The confusion in the current regulation results from the fact that the Federal Credit Union Act (Act) requires NCUA approval for transactions that are not addressed specifically in the regulation. The Act requires prior approval for an insured credit union to "acquire the assets of, or assume liability to pay any member accounts in, any other insured credit union." 12 U.S.C. 1785(b)(3). The regulation,

however, currently only specifically requires approval for "for acquiring loans or assuming or receiving an assignment of deposits, shares or liabilities" from credit unions or other institutions that are not insured by the National Credit Union Share Insurance Fund (NCUSIF). 12 CFR 741.8(a) (emphasis added).

This amendment will clarify that transactions involving the sale or purchase of loans or other assets between federally insured credit unions (FICUs) do not require NCUA approval. NCUA notes that other regulations may limit or otherwise regulate those transactions, for example, the member business lending rule, the fixed asset rule, the eligible obligations rule, and so forth. 12 CFR Part 723, §§ 701.36, 701.23.

For those transactions that do require approval, the amendment adds a new subsection describing what a credit union seeking approval should submit and stating that a request for approval should be sent to the appropriate NCUA regional office.

The Act, in subsections 1785(b)(1) and (3), requires FICUs to obtain NCUA approval for various transactions. 12 U.S.C. 1785(b)(1), (3). Subsection (b)(1) concerns transactions with credit unions and other institutions not insured by NCUSIF. Subsection (b)(3) concerns transactions between insured credit unions. In addition to § 741.8, these sections in the Act provide the authority for Part 708a, which addresses conversions to mutual savings banks, and Part 708b, which addresses mergers generally and also conversions to private insurance. Section 741.8 also implements these sections to the extent that it identifies certain transactions that require NCUA approval.

The regulatory history of § 741.8 indicates the Board did not intend to require approval for certain transactions. In 1990, when § 741.8 was first proposed and adopted, NCUA was particularly concerned about FICUs acquiring loans or assuming responsibility for member or customer accounts from privately insured credit unions or any financial institution that was not insured by the NCUSIF. NCUA was concerned because this was a period marked by the failure of many privately insured credit unions as well as the failure of other financial institutions.

Recently, a FISCU asked whether NCUA approval was required for a transfer of one of its branch offices and associated member accounts to another FISCU. NCUA regulations are silent regarding the need for NCUA approval

for the transaction. The proposed amendment clarifies NCUA's position.

Currently, § 741.8 is silent on transfers between two FICUs. It requires any FICU to receive Board approval before "either purchasing or acquiring loans or assuming or receiving an assignment of deposits, shares, or liabilities" from any credit union that is not federally insured or from any non-credit union financial institution. 12 CFR 741.8(a). The rule only excludes the purchase of particular student loans and real estate secured loans and the assumption of assets associated with member retirement accounts or in which the FICU has a security interest from the approval requirement.

The regulatory history of § 741.8 addresses the apparent gap under the current rule. In 1990, when first proposed, the current rule would have covered transfers of assets, including fixed assets like a brick and mortar branch office, in addition to transfers of loans and share liabilities and between FICUs. 55 FR 49059 (November 26, 1990). The final version of the rule, however, eliminated the requirement for Board approval of transfers between FICUs. The NCUA Board determined transfers between FICUs did not materially increase risk to the NCUSIF. 56 FR 35808 (July 29, 1991). Additionally, the Board believed transfers between FICUs should not unduly affect the safety and soundness of FICUs because of regulations applicable to these credit unions, the examination of FICUs for compliance with these regulations, and enforcement of the regulations by appropriate regulators. *Id.* Accordingly, NCUA did not require the approval of these individual transactions.

B. Discussion

NCUA is aware of four transactions involving an FICU acquiring the assets of another non-liquidating FICU in the past two years. While the regulatory history acknowledges asset transfers between FICUs are permissible, the proposed regulation clarifies this authority by specifically excluding the transfer of assets between FICUs from the requirement to receive approval from the NCUA Board.

The proposed rule continues to except from coverage loan purchases involving the packaging of student loans and real estate secured loans by a federal credit union (FCU) under to § 701.23(b) of the NCUA regulations for sale on the secondary market. These transactions are subject to industry standards ensuring safety and soundness. Additionally, the window of opportunity to consummate these

transactions is often limited, and agency review could disadvantage FCUs' ability to compete in doing these transactions.

FCUs have the authority to purchase "eligible obligations," including member loans from any source, loans of a liquidating credit union, "student loans, from any source" and "real estate-secured loans, from any source" if the student and real estate loans are to be packaged for sale on the secondary market. 12 CFR 701.23(b)(1)(i-iv). If a purchase of loans from a failed thrift, bank, or credit union meets the criteria of an "eligible obligation" and other criteria in § 701.23 an FCU is permitted to purchase the asset. For this reason, the proposed rule does not include specific language regarding an FICU's purchase of loans from another FICU.

C. Request for Comments on § 741.3

NCUA requests comment on revisions to the rules involving special reserves for nonconforming and credit union service organization (CUSO) investments by FISCUs. Comments from interested parties on these issues will assist NCUA in its regulatory review process.

NCUA is considering removing the requirement for FISCUs to establish special reserves under § 741.3(a)(2) for nonconforming investments and, in place of the requirement, requiring FICU's nonconforming investments to be investment grade. The reason NCUA is considering this change is that some state-chartered credit unions may make investments beyond those authorized in the Act or NCUA regulations for FCUs, and these investments raise safety and soundness concerns. FISCUs are currently required to establish special reserves for these investments if their market value is less than book value. This rule differs from Generally Accepted Accounting Principles (GAAP). To reduce the risk to the NCUSIF and conform to GAAP, the NCUA believes FICU investments should be limited to "investment grade" securities. By an "investment grade" security, NCUA means a security that at the time of purchase is rated in one of four highest rating categories by at least one nationally recognized statistical rating organization, which is similar to the definition for "investment grade" established by the National Association of Securities Dealers. 69 FR 40429 (July 2, 2004). The NCUA solicits comments on whether the current rule should be changed, whether FICU investments should be limited to investment grade, or whether there is some other measure commenters believe would be more appropriate.

Finally, NCUA is considering extending some of the limits in the CUSO rule to FISCUs. State-chartered credit unions are not subject to the limitations and requirements of Part 712. FCUs can invest in and lend to a CUSO only if it is structured as a corporation, limited liability company, or limited partnership and primarily serves credit unions or their membership. 12 CFR 712.3. In addition to structure requirements and investments and loan limits, NCUA requires corporate separateness between an FCU and a CUSO. 12 CFR 712.4. NCUA is concerned about the potential liability for state-chartered credit unions, and the resulting potential liability for the NCUSIF, if their CUSOs do not observe corporate separateness. Therefore, NCUA solicits comments on whether its regulations should require FISCUs investing in CUSOs to comply with the limits on the structure, accounting, audits, NCUA access, and corporate separateness addressed in §§ 712.3 and 712.4 to protect the NCUSIF.

Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions, or those with under ten million dollars in assets. The proposed rule is grounded in NCUA concerns about the safety and soundness of the transactions and their potential effects on FICUs and the NCUSIF. NCUA has knowledge of only four transactions that would be covered by the proposed rule in two years. Accordingly, the Board determines and certifies that this proposed rule does not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

B. Paperwork Reduction Act

This proposed regulation contains an application requirement. An FICU must apply for NCUA's written approval to purchase assets or assume liabilities from privately-insured credit unions, other financial institutions, or their successors in interest. NCUA has not mandated any specific requirements for this application, but anticipates it will consist of a letter requesting approval and briefly describing the nature of the transaction and any transaction documents created in the regular course of business as evidence of an agreement,

contract or offer of a proposed purchase or assumption.

NCUA requests public comment on all aspects of the collection of information in this proposed rule. NCUA believes that little time will be necessary for the development of the application because FICUs may use their existing business records to support the approval request. NCUA estimates a nominal burden of one hour per FICU and will revisit this estimate in light of the comments NCUA receives.

NCUA will submit the collection of information requirements contained in the regulation to the OMB in accordance with the Paperwork Reduction Act of 1995. 44 U.S.C. 3507. NCUA will use any comments received to develop its new burden estimates. Comments on the collections of information should be sent to Office of Management and Budget, Reports Management Branch, New Executive Office Building, Room 10202, Washington, D.C. 20503; Attention: Mark Menchik, Desk Officer for NCUA. Please send NCUA a copy of any comments you submit to OMB.

The likely respondents are FICUs.
Estimated number of respondents: 5.
Estimated average annual burden hours per respondent: 1 hour.

Estimated total annual disclosure and recordkeeping burden: 5.

NCUA invites comment on:

(1) The accuracy of NCUA's estimate of the burden of the information collections;

(2) Ways to minimize the burden of the information collections on FICUs, including the use of automated collection techniques or other forms of information technology; and

(3) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Recordkeepers are not required to respond to this collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. NCUA is currently requesting a control number for this information collection from OMB.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule may have an occasional direct affect on the states, the relationship between the national

government and the states, or on the distribution of power and responsibilities among the various levels of government. The proposed rule may supersede provisions of state law, regulation or approvals. Since the proposed rule might lead to conflicts between the NCUA and state financial institution regulators on occasion, comments are requested on means and methods to eliminate, or at least minimize, potential conflicts in this area. Commenters may wish to provide recommendations on the potential use of delegated authority, cooperative decision-making responsibilities, certification processes of federal standards, adoption of comparable programs by states requesting an exemption for their regulated institutions, or other ways of meeting the intent of the Executive Order.

D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

E. Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive.

List of Subjects in 12 CFR Part 741

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on July 21, 2005.

Mary Rupp,

Secretary of the Board.

For the reasons stated above, NCUA proposes to amend 12 CFR part 741 as follows:

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 is revised to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

2. Revise § 741.8 to read as follows:

§ 741.8 Purchase of assets and assumption of liabilities.

(a) Any credit union insured by the National Credit Union Share Insurance Fund (NCUSIF) must receive approval from the NCUA before purchasing loans

or assuming an assignment of deposits, shares, or liabilities from:

(1) Any credit union that is not insured by the NCUSIF;

(2) Any other financial-type institution (including depository institutions, mortgage banks, consumer finance companies, insurance companies, loan brokers, and other loan sellers or liability traders); or

(3) Any successor in interest to any institution identified in paragraph (a)(1) or (a)(2) of this section.

(b) Approval is not required for:

(1) Purchases of student loans or real estate secured loans to facilitate the packaging of a pool of loans to be sold or pledged on the secondary market under § 701.23(b)(1)(iii) or (iv) of this chapter or comparable state law for state-chartered credit unions, or purchases of member loans under § 701.23(b)(1)(i) of this chapter or comparable state law for state-chartered credit unions;

(2) Assumption of deposits, shares or liabilities as rollovers or transfers of member retirement accounts or in which a federally-insured credit union perfects a security interest in connection with an extension of credit to any member; or

(3) Purchases of assets, including loans, or assumptions of deposits, shares, or liabilities by any credit union insured by the NCUSIF from another credit union insured by the NCUSIF, except a purchase or assumption as a part of a merger under part 708b of this chapter.

(c) A credit union seeking approval under paragraph (a) of this section must submit a letter to the regional office with jurisdiction for the state where the credit union operates. The letter must request approval and state the nature of the transaction and include copies of relevant transaction documents. The regional director will make a decision to approve or disapprove the request as soon as possible depending on the complexity of the proposed transaction. Credit unions should submit a request for approval in sufficient time to close the transaction.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 742

Regulatory Flexibility Program

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The National Credit Union Administration (NCUA) seeks public comment on a proposal to modify the minimum net worth and CAMEL criteria for eligibility for NCUA's Regulatory Flexibility Program. Federally-insured credit unions that qualify for the Program are exempt in whole or in part from a series of regulatory restrictions and also are allowed to purchase and hold an expanded range of eligible obligations.

DATES: Comments must be received on or before September 27, 2005.

ADDRESSES: You may submit comments by any one of the following methods (Please send comments by one method only):

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *NCUA Web Site:* http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.

Follow the instructions for submitting comments.

• *E-mail:* Address to regcomments@ncua.gov. Include “[Your name] Comments on Proposed Rule 742, RegFlex Program” in the e-mail subject line.

• *Fax:* (703) 518–6319. Use the subject line described above for e-mail.

• *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

• *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT: Steven W. Wideman, Trial Attorney, Office of General Counsel, at 703/518–6557; or Lynn K. Markgraf, Program Officer, Office of Examination and Insurance, at 703/518–6396.

SUPPLEMENTARY INFORMATION:

A. Background of Existing Part 742

Effective in 2002, the NCUA Board established a Regulatory Flexibility Program (“RegFlex”) that exempts qualifying credit unions in whole or in part from a series of regulatory restrictions, and grants them additional powers. 12 CFR part 742; 66 FR 58656 (Nov. 23, 2001). Under existing part 742, a credit union may qualify for RegFlex automatically or by application to the appropriate Regional Director.

RegFlex Designation. To qualify automatically under the existing RegFlex Program, a credit union must meet two criteria. First, it must have a composite CAMEL rating of “1” or “2” for two consecutive examination cycles. Second, it also must achieve a net worth