■ For the reasons set forth in the preamble, the Board amends 12 CFR part 203 as follows:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

■ 1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

■ 2. In Supplement I to part 203, under section 203.2 Definitions, *2(e) Financial Institution*, paragraph 2. is revised.

SUPPLEMENT I to PART 203—STAFF COMMENTARY

* * * * *

§ 203.2 Definitions.

2(e) Financial Institution

* * * * *

2. *Adjustment of exemption threshold for depository institutions.* For data collection in 2006, the asset-size exemption threshold is $35 million. Depository institutions with assets at or below $35 million are exempt from collecting data for 2006.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, December 15, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E5–7579 Filed 12–20–05; 8:45 am]

BILLING CODE 3510–22–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 723

Member Business Loans

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is revising its member business loans (MBL) rule to clarify the minimum capital requirements a federally insured corporate credit union (corporate) must meet to make unsecured MBLs to members that are not credit unions or corporate credit union service organizations (corporate CUSOs). NCUA is also revising the definition of a construction or development loan (C&D loan) to include certain loans to borrowers who already own or have rights to property and the definition of net worth to be more consistent with its definition in the Federal Credit Union Act (Act) and NCUA's prompt corrective action regulation (PCA). Finally, the rule clarifies that a state may rescind a state MBL rule without NCUA's approval.

DATES: This rule is effective January 20, 2006.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, at the above address, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

In addition to making regulatory changes as the need arises, NCUA also reviews all of its existing regulations every three years. This review is conducted on a rolling basis so that a third of the regulations are reviewed each year. This helps NCUA update its regulations to address current regulatory concerns. NCUA provides notice to the public of those regulations under review so the public has an opportunity to comment. As a result of this process and comments received on a previous MBL rulemaking, NCUA issued proposed revisions to the MBL rule with a request for comments in April 2005. 70 FR 20487 (April 20, 2005).

B. Corporate Credit Union Capital Requirements

MBLs made by corporates to member credit unions and corporate CUSOs are exempt from the MBL rule. 12 CFR 704.7(e)(1), (2); 12 CFR part 723. MBLs made by corporates to other members, however, are subject to the MBL rule. Accordingly, when the MBL rule applies, a corporate must comply with the rule's collateral and security requirements. 12 CFR 723.7.

For example, one of the conditions a credit union must meet to make unsecured MBLs is to be ''well capitalized as defined by § 702.102(a)(1)'' of the PCA rule. 12 CFR 723.7(c)(1); 12 CFR part 702. The PCA rule, however, does not apply to corporates. 12 U.S.C. 1790d(m); 12 CFR 702.1(c). Rather, Corporate CUs generally must maintain a minimum capital ratio of four percent or a different minimum capital ratio under special circumstances. 12 CFR 704.3(d), (e). Accordingly, NCUA proposed to amend the MBL rule's capital requirements for unsecured MBLs to accommodate the differences between the general capital requirements for natural person credit unions and those for corporates. The proposed amendment is adopted in the final rule without change.

C. Definition of Net Worth

The definition of net worth in the MBL rule is slightly different than in the Act and PCA. 12 U.S.C. 1790d(o)(2); 12 CFR 702.2(f). To avoid confusion, NCUA proposed to revise the definition of net worth in the MBL rule to be the same as in PCA. The PCA rule's definition of net worth expands slightly the definition in the Act. The PCA and Act definitions both state that secondary capital accounts are counted in the net worth of low income credit unions. The proposed amendment is adopted in the final rule without change.

D. Definition of Construction or Development Loan

C&D loans are subject to more stringent regulatory limitations than other MBLs because C&D loans pose a significantly greater risk than other less speculative MBLs. Typically, NCUA has cited examples of C&D loans as including loans to finance development of: (1) Residential real estate projects, such as condominiums and single and multi-family housing; and (2) commercial real estate, such as hotels, strip malls, and office buildings. 56 FR 15053 (April 15, 1991). This type of lending is generally characterized by reliance on the anticipated future sale of the project or future cash flow of an uncompleted project to repay the loan. Id. Additionally, this type of lending is premised on the project being completed on time, within budget and a successful business enterprise. 56 FR 2723 (January 24, 1991). None of these conditions are assured and changing markets further complicate the underwriting analysis.[1] As a result, C&D loans are more speculative in nature than other MBLs.

The MBL rule's current definition of C&D loans is limited to financing arrangements for acquiring property or rights to property with the intent to convert it to an income producing property. This definition, by its terms, would exclude a loan if a borrower already owns or has rights to the property.

In the proposal, NCUA stated it believed an appropriate test for determining if a loan is a C&D loan is whether the loan will be used to renovate or otherwise develop a property for an income producing purpose. NCUA also stated it did not believe loans for these purposes, the essential nature of which is related to construction or development, should be excluded from the definition of C&D

[1] While the MBL rule contains collateral and security requirements and limits of various sorts, it does not require a credit union to employ specific underwriting methods. Rather, a credit union should establish an underwriting process that is tailored to the types of loans it makes, within the bounds of safety and soundness, and in conformity with industry best practices.

loan just because the borrower has already acquired the property or rights to it. NCUA proposed a revised definition of C&D loans to reflect this and still believes that MBLs to borrowers who have already acquired a property or right to property should not be excluded on that basis from the requirements applicable to C&D loans. NCUA recognizes, however, that the proposed definition and the test articulated for determining what is a C&D loan were too broadly stated, especially as related to renovations. NCUA understands that the proposed definition could have been read more broadly than intended.

Accordingly, NCUA is adjusting the definition of C&D loans as discussed in the summary of comments section below to clarify NCUA's intent to broaden the definition to capture only true C&D loans to borrowers who have already acquired the subject property or rights to it.

E. Government Guaranteed Loan Programs

In October 2004, NCUA amended the MBL rule to permit credit unions to make Small Business Administration (SBA) guaranteed loans under SBA's less restrictive lending requirements instead of under the more restrictive MBL rule. 69 FR 62563 (October 27, 2004). Before issuing the amendment, NCUA reviewed the SBA's loan programs in which credit unions can participate and determined they provide reasonable criteria for credit union participation and compliance within the bounds of safety and soundness.

Additionally, NCUA determined these SBA programs are ideally suited to the mission of many credit unions to satisfy their members' business loans needs.

When NCUA solicited public comment on the SBA amendment, a number of commenters suggested expanding the scope of the amendment to include other government guaranteed loan programs. Some commenters specifically named the Farm Service Agency and United States Department of Agriculture (USDA) loan programs. Others suggested all government guaranteed loan programs be included.

NCUA is willing to consider other government guaranteed loan programs as it becomes apparent there is demand for the program among credit unions. Since October 2004, NCUA has learned there may be such demand and solicited comment in the proposal on how best to broaden the MBL rule to enable credit unions to participate more fully in other government guaranteed loan programs.

NCUA noted its interest in receiving comments on whether to broaden the MBL rule in this regard, and, if so, if it is better to permit only specifically identified programs on a case-by-case basis or to permit all such programs. The comments received are discussed in the summary of comments section below.

F. Summary of Comments

Although NCUA received 134 comment letters on the proposal, 100 came from one particular federal credit union (FCU), its members and employees, and 4 came from a state credit union. When multiple letters are received from the same party with the same comment, NCUA regards them as one comment. Accordingly, NCUA summarizes total comments received as 32: 11 from FCUs, 5 from state credit unions, 2 from corporates, 2 from credit union service organizations, 10 from credit union trade associations, 1 from a professional association of state and territorial regulatory agencies, and 1 from a banking trade association.

Sixteen commenters addressed the proposal to clarify the minimum capital requirements for corporates, and eighteen commenters addressed the proposal to revise the definition of ''net worth.'' All voiced their support for those proposed amendments and they will become part of the MBL rule.

Seventeen commenters responded to NCUA's request for comments on how best to amend the MBL rule to enable credit unions to participate more fully in government guaranteed loan programs beyond the SBA's programs. All supported expanding the MBL rule to include all government guarantee programs, although with little discussion about safety and soundness issues other than generally contending government guaranteed loan programs should be presumed safe and sound. Some commenters stated this expansion also should include programs of government sponsored enterprises and requested additional relief from various aspects of the MBL rule not raised in this rulemaking. The banking trade association stated that liberalizing the collateral requirements for government guaranteed loan programs would conflict with what it believes is Congress' intent regarding commercial lending limits for credit unions.

NCUA remains committed to enabling credit unions to participate more fully in more government guaranteed loan programs. To this end, NCUA has entered into a memorandum of understanding with the USDA to identify and promote appropriate USDA Rural Development programs to credit unions NCUA insures and regulates and has specifically acknowledged at least two programs permissible for FCUs. NCUA has also entered into a similar memorandum of cooperation with the Export-Import Bank of the United States. Safety and soundness concerns, however, dictate that NCUA move forward carefully. There are significant differences in the terms of various government guarantee programs, some with complex participation and guarantee requirements that could be problematic for inexperienced credit unions. Accordingly, although NCUA is not ready to expand the universe of permissible programs to include all government programs in this rulemaking, NCUA will take the comments received into account as it considers future amendments to the MBL rule in this regard.

Thirteen commenters supported the proposed revision to the definition of C&D loans; 16 commenters opposed it. Many of those opposed supported a change in the definition for the purposes NCUA stated in the proposal but did not believe the language of the proposed definition achieved that purpose.

The most frequent concern about the proposed definition was that it is too broad and could be read to include significantly more MBLs as C&D loans than NCUA intends. Many commenters believed the definition could be read to include loans for routine maintenance, upkeep, and minor improvements for an income producing property.

NCUA is revising the proposed definition of a C&D loan to address the concerns raised by these commenters. NCUA's intent is to broaden the scope of the definition of C&D loans beyond those exclusively related to financing to *acquire* property for C&D purposes to include loans for C&D purposes to borrowers that *already own* the property. NCUA's intent is not to capture less risky MBLs in a definition intended to describe more risky and more speculative loans.

Even with a revised definition, the specific facts and context of a particular loan will need to be analyzed to determine if it fits the definition of a C&D loan. If a member borrows money to repair a roof on a barn on an existing farming operation, this is an MBL but is not a C&D loan. A C&D loan does not include a loan for routine maintenance of a borrower's existing business or a loan to enhance or expand a borrower's existing business unless those renovations convert the property to a different use, which NCUA considers highly speculative, or are so major as to be the equivalent of converting the use of the property. For example, a loan to expand the parking lot of a small strip

shopping center would not be a C&D loan, but a loan to renovate the small strip shopping center into a mega-mall would be a C&D loan as it would be viewed as a major renovation that converts the use of the property, and, therefore, is highly speculative. NCUA does not want to establish specific dollar or percentage of property value limits to determine when a renovation is so major as to be the equivalent of converting the use of the property. NCUA believes it is better and provides more flexibility to analyze this based on the unique facts surrounding a particular loan.

The Office of General Counsel has previously addressed the issue of renovation of commercial property and concluded that a loan for renovation of a commercial property already owned by the borrowers would be considered a C&D loan in an opinion letter issued two years ago. OGC Opinion Letter 03–0430 (September 25, 2003) (referencing OGC Opinion Letter 00–0809 (September 21, 2000)). Letter 03–0430, while based on a limited factual example, contemplated renovation to buildings that were part of a warehouse and office complex and refinancing of an existing mortgage. As noted in Letter 00–0809, the determination of whether a particular loan is a C&D loan may depend on the particular facts surrounding the granting of the loan. This final rule clarifies that a loan to finance a renovation will be subject to the additional requirements of a C&D loan if it is a major renovation. As discussed above, this clarification means that MBLs that finance maintenance or repair of a property without changing the use of the commercial property will not be considered C&D loans. Of course, even if a loan is deemed to be a C&D loan, a credit union may apply for a waiver of the aggregate limit for C&D loans and minimum borrower equity requirement.

Loans to convert a property to a different use are C&D loans. For example, a loan to convert a movie theater into a restaurant is a C&D loan. A loan to convert a large Victorian home used for residential purposes into a six-room inn also would be a C&D loan. In both instances, the loans are for the purpose of converting the use of the properties, which is speculative. By contrast, a loan to repair the roof or replace the carpet and wallpaper of an operating inn would not be a C&D loan as it neither converts the use of the property, nor is so major a renovation to be considered the equivalent of converting the use of the property. Another example is a hotel with a fair market value of $10 million that wants to borrow $1 million to build and outfit an exercise facility in the hotel to enhance and expand its business. While the loan amount represents a significant percentage of the fair market value of the property, 10% in this example, this is not a construction or development loan. It is a member business loan to improve or renovate an existing incoming producing property, but it is not so major a renovation as to be considered the equivalent of converting the use of the property. Alternatively, if the same hotel with a fair market value of $10 million wanted to borrow $4 million or $5 million to build a luxury health spa on the hotel grounds, it should be considered a construction and development loan. The loan amount is 40% to 50% of the fair market value of the property and, even if the use of the property has not been converted, the expansion and renovation are so major as to be considered the equivalent of converting the use of the property, which is speculative.

NCUA believes that loans in the range of 40%–50% of the fair market value of a property or business would, in most cases, be considered construction or development loans and worthy of additional regulatory scrutiny. NCUA cautions that even loans representing a smaller percentage of the fair market value of an existing property could be considered construction or development loans if they do, in fact, involve large dollar amounts, new construction, or new uses for the property.

The NCUA Board believes it should not attempt to establish by regulation a specific dollar amount or a fixed percentage of a property's fair market value as a threshold to determine when a renovation is so major as to be considered the equivalent of converting the use of the property or a major expansion of its current use. Rather, NCUA believes, given the nature of construction and development loans, that credit unions must analyze the facts and circumstances of a particular loan keeping in mind the regulatory definition. To assist credit unions and others that refer to the regulation, examples as discussed in the preamble are being incorporated into the final rule itself as guidance. While the NCUA Board wants to provide flexibility in its regulation, it advises credit unions that they must keep in mind that construction and development loans are, by their nature, more speculative and present greater risks than other business loans. Accordingly, they warrant greater regulatory scrutiny and limitations.

In refining the definition of a C&D loan in the final rule, NCUA has considered if it would be helpful to look to a borrower's accounting treatment of expenditures under generally accepted accounting principles (GAAP), either as part of the definition of a C&D loan in the regulation or as guidance. NCUA has decided not to link the classification of an MBL as a C&D loan to a borrower's accounting of expenditures as expenses or capital improvements requiring depreciation. Whether a credit union classifies an MBL as a C&D loan is to be determined on the basis of the provisions in Part 723, without regard to GAAP's requirements applicable to a borrower's accounting treatment of its expenditures.

G. Technical Correction and Clarification

As noted above, NCUA revised the definition of net worth in § 723.21, the definitions sections of the MBL rule, to be more consistent with the way that term is defined in the Act and PCA. That term is also used in § 723.16 in a way that is not identical to the revised definition in § 723.21. Accordingly, NCUA is revising § 723.16 to eliminate that inconsistency.

NCUA has long taken the position that a state, which has a state MBL rule in place previously approved by NCUA for use for federally-insured state chartered credit unions (FISCUs), may rescind that state MBL rule without NCUA approval. The effect of that rescission is that FISCUs subject to the previous state MBL rule would be subject to NCUA's MBL rule. NCUA believes it would be helpful to make this clarification in the MBL rule as questions have arisen from time to time. To ensure MBL oversight, a state supervisory agency should notify NCUA if it decides to rescind its state MBL rule and the rule also includes a notice provision.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions (those under ten million dollars in assets). This rule clarifies capital requirements for making unsecured MBLs, revises definitions for consistency and practical application and addresses comments on expanding the MBL rule regarding government guaranteed loan programs, without imposing any additional regulatory burden. This rule would not have a significant economic impact on a substantial number of small credit

unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

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. This rule will not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

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

The NCUA has determined that this 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).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 723

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 15, 2005.

Mary F. Rupp,

Secretary of the Board.

■ For the reasons stated above, NCUA amends 12 CFR part 723 as follows:

PART 723—MEMBER BUSINESS LOANS

■ 1. The authority citation for part 723 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

■ 2. Revise § 723.7(c)(1) to read as follows:

§ 723.7 What are the collateral and security requirements?

* * * * *

(c) * * *

(1) You are a natural person credit union that is well capitalized as defined by § 702.102(a)(1) of this chapter or you are a corporate credit union that maintains a minimum capital ratio as required by § 704.3(d) of this chapter or a different ratio as permitted under § 704.3(e) of this chapter;

* * * * *

■ 3. Revise § 723.16, paragraph (a) to read as follows:

§ 723.16 What is the aggregate member business loan limit for a credit union?

(a) *General.* The aggregate limit on a credit union's net member business loan balances is the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets. Loans that are exempt from the definition of member business loans are not counted for the purpose of the aggregate loan limit.

* * * * *

■ 4. Revise § 723.20 by adding new paragraph (c) to read as follows:

§ 723.20 How can a state supervisory authority develop and enforce a member business loan regulation?

* * * * *

(c) A state supervisory authority that administers a state member business loans rule, approved by NCUA under §§ 723.20(a) and (b), may rescind its rule without NCUA approval. A state supervisory authority should notify NCUA if it anticipates rescinding its rule to foster regulatory continuity and cooperation.

■ 5. Revise the definitions of ''Construction or development loan'' and ''Net worth'' in § 723.21 to read as follows:

§ 723.21 Definitions.

* * * * *

Construction or development loan is a financing arrangement for acquiring property or rights to property, including land or structures, with the intent to convert it to income-producing property such as residential housing for rental or sale; commercial use; industrial use; or similar uses. Construction or development loan includes a financing arrangement for the major renovation or development of property already owned by the borrower that will convert the property to income producing property or convert the use of income producing property to a different use from its use before the major renovation or development or is a major expansion of its current use. Construction or development loan does not include loans to finance maintenance, repairs, or improvements to an existing income producing property that do not change its use. Examples to illustrate when a loan is or is not a construction or development loan follow.

Example 1. If a member borrows money to repair a roof on a barn on an existing farming operation, this is a member business loan but is not a construction or development loan. A construction or development loan does not include a loan for routine maintenance of a borrower's existing business or a loan to enhance or expand a borrower's existing business unless those renovations convert the property to a different use or are so major as to be considered the equivalent of converting the use of the property.

Example 2. A loan to convert a movie theater into a restaurant is a construction or development loan. A loan to convert a large Victorian home used for residential purposes into a six-room inn also would be a construction or development loan. In both instances, the loans are for the purpose of converting the use of the properties. By contrast, a loan to repair the roof or replace the carpet and wallpaper of an operating inn would not be a construction or development loan as it neither converts the use of the property, nor is so major a renovation to be considered the equivalent of converting the use of the property.

Example 3. A loan to expand the parking lot of a small strip shopping center would not be a construction or development loan, but a loan to renovate the small strip shopping center into a mega-mall would be a construction or development loan as it would be viewed as a major renovation that converts the use of the property.

Example 4. A hotel with a fair market value of $10 million borrows $1 million to build an exercise facility in the hotel to enhance the property. The loan amount is 10% of the fair market value of the property. This is not a construction or development loan. It is a member business loan to improve or renovate an existing incoming producing property, but it is not so major a renovation as to be considered the equivalent of converting the use of the property. In another scenario, a hotel with a fair market value of $10 million borrows $5 million to build a luxury health spa on the hotel grounds. The loan amount is 50% of the fair market value of the property. This is a construction or development loan, even if the use of the property has not been converted, as the renovation is so major as to be considered the equivalent of converting the use of the property.

* * * * *

Net worth means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles. Retained earnings consists of undivided earnings, regular reserves, and any other appropriations designated by management or regulatory authorities. This means that only undivided earnings and appropriations of undivided earnings are included in net worth. For low income-designated credit unions, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims, including claims of creditors, shareholders and the NCUSIF. For any credit union, net worth does not include the allowance for loan and lease losses account.

[FR Doc. 05–24285 Filed 12–20–05; 8:45 am]
BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

RIN 3133–AD14

Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is issuing 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.

DATES: This rule is effective January 20, 2006.

FOR FURTHER INFORMATION CONTACT: Moisette Green, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

In July 2005, the Board published its proposed amendment to clarify the scope of § 741.8, along with a request for comments on projected amendments to §§ 712.3, 712.4 and 741.3, with a 60-day comment period. 70 FR 43794 (July 29, 2005). The proposal identified certain transactions that would require NCUA approval and some exceptions.

The purpose of this rule is to clarify the scope of § 741.8. This regulation identifies certain transactions that require NCUA approval and some exceptions. Confusion in the prior regulation resulted from the fact that the Federal Credit Union Act (Act) required NCUA approval for transactions that were 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).

B. Discussion

The Act, in sections 205(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 the National Credit Union Share Insurance Fund (NCUSIF). Subsection (b)(3) concerns transactions between FICUs. In addition to § 741.8, these sections in the Act provide the authority for other rules, including Part 708b, which addresses mergers generally. 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.

Prior to this final rule, § 741.8 was silent on transfers between two FICUs. It required 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. The rule only excluded 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 this apparent gap. In 1990, when first proposed, § 741.8 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. These determinations hold true today, so the Board issues this final rule to clarify the scope of § 741.8.

This rule clarifies that transactions involving the sale or purchase of loans or other assets between 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 describes what a credit union seeking approval should submit and where a request for approval should be sent.

NCUA recognizes that in one narrow circumstance, FISCUs will need approval under § 741.8 when FCUs would not. Specifically, FISCUs must apply for NCUA approval to purchase loans from credit union service organizations (CUSOs). Section 741.8 does not exempt transactions between a FICU and a CUSO. An FCU's purchase of a member loan from any source is governed by § 701.23, the eligible obligations rule. That rule does not apply to FISCUs. The differences between the statutory and regulatory authority of FCUs and state-chartered credit unions present this unique problem. Section 741.8 is a safety and soundness regulation and, therefore, NCUA will review transactions involving FISCUs where, as in this limited circumstance, there is no exemption.

NCUA is also aware that other Federal or State laws may apply to the transfer of loans between FICUs. This rule does not address the application of those laws. NCUA expects that FICUs that will exercise due diligence and ensure that they comply with all laws or contractual obligations to third parties before the transfer of loans to other FICUs are completed.

This rule continues to except from coverage loan purchases involving the