programs, with an original maturity of one year or less.

* * * * *

(b) * * *

(9) *Early amortization.* (i) A savings association that originates a securitization of revolving retail credits that contains early amortization triggers must risk weight the off-balance sheet portion of such a securitization (investors' interest) by multiplying the outstanding principal amount of the investors' interest by the appropriate credit conversion factor as provided by paragraph (b)(9)(ii) or (iii) of this section and then assigning the resultant credit equivalent amount to the appropriate risk weight category.

(ii) *Calculation of credit conversion factor.* (A) The credit conversion factor to be applied to such a securitization generally is a function of the securitizations' most recent three-month average excess spread level, the point at which excess spread in the securitization must be trapped in a spread or reserve account (spread trapping point), and the excess spread level at which an early amortization of the securitization is triggered (early amortization trigger). This difference between the spread trapping point and the early amortization trigger is the excess spread differential.

(B) The excess spread differential must then be divided by four to create the standard excess spread differential value. This value will be used to determine the appropriate credit conversion factor in accordance with Table D of this section. The upper and lower bounds for each of the excess spread differential segments is calculated using the spread trapping point and the standard excess spread differential value in accordance with the formulas provided in Table D of this section. However, if the securitization documents do not require excess spread to be diverted to a spread or reserve account at a certain level, the excess spread differential is equal to 4.5 percentage points.

(C) *(1)* If the three-month average excess spread equals or exceeds the securitization's spread trapping point, then the credit conversion factor is equal to zero. If the three-month average excess spread is less than the spread trapping point, then the credit conversion factors (5 percent, 10 percent, 50 percent, and 100 percent) are then assigned to each of the four equal excess spread differential segments in descending order, beginning at the spread trapping point as the securitization approaches early amortization, in accordance with Table D of this section.

*(2)* If the securitization does not use the excess spread as an early amortization trigger, then a 10 percent credit conversion factor is applied to the current outstanding principal balance of the investors' interest.

TABLE D.—CALCULATION OF CREDIT CONVERSION FACTORS FOR EARLY AMORTIZATIONS

| Excess spread differential segments | Excess spread ranges | Credit Conversion factor (percent) |
|---|---|---|
| 1 | Excess spread equals or exceeds the trapping point | 0 |
| 2 | Upper Bound < Spread Trapping Point | 5 |
| | Lower Bound = Spread Trapping Point—(1 × SESDV) | |
| 3 | Upper Bound < Spread Trapping Point—(1 × SESDV) | 10 |
| | Lower Bound = Spread Trapping Point—(2 × SESDV) | |
| 4 | Upper Bound < Spread Trapping Point—(2 × SESDV) | 50 |
| | Lower Bound = Spread Trapping Point—(3 × SESDV) | |
| 5 | Upper Bound < Spread Trapping Point—(3 × SESDV) | 100 |
| | Lower Bound = None | |

**Note:** SESDV is the standard excess spread differential value.

(iii) *Limitations on risk-based capital requirements.* For a savings association subject to the early amortization requirements in paragraph (b)(9) of this section, the total risk-based capital requirement for all of the savings association's exposures to a securitization of revolving retail credits is limited to the greater of the risk-based capital requirement for residual interests or the risk-based capital requirement for the underlying securitized assets calculated as if the savings association continued to hold the assets on its balance sheet.

* * * * *

Dated: September 9, 2003.

By the Office of Thrift Supervision.

**James E. Gilleran,**

*Director.*

[FR Doc. 03–23757 Filed 9–30–03; 8:45 am]

**BILLING CODE 4801–01–P; 6720–01–P; 6210–01–P; 6714–01–P**

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Parts 701 and 741

### Suretyship and Guaranty; Maximum Borrowing Authority

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

**ACTION:** Proposed rule.

**SUMMARY:** NCUA is proposing to revise its rules concerning maximum borrowing authority to permit federally insured, State-chartered credit unions (FISCUs) to apply for a waiver from the maximum borrowing limitation of 50 percent of paid-in and unimpaired capital and surplus (shares and undivided earnings, plus net income or minus net loss). This amendment will provide FISCUs with more flexibility by allowing them to apply for a waiver up to the amount permitted under State law.

NCUA is also proposing adding a provision to its regulations that allows a Federal credit union (FCU) to act as surety or guarantor on behalf of its members. The proposal establishes certain requirements to ensure that FCUs, and FISCUs if permitted under state law to act as a surety or guarantor, are not exposed to undue risk.

**DATES:** The NCUA must receive comments on or before December 1, 2003.

**ADDRESSES:** Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to *regcomments@ncua.gov. Please send comments by one method only.*

**FOR FURTHER INFORMATION CONTACT:** Mary F. Rupp, Staff Attorney, Division of Operations, Office of General

Counsel, at the above address or telephone: (703) 518–6540.

**SUPPLEMENTARY INFORMATION:**

**A. New Sections 701.20 and 741.221—Suretyship and Guaranty**

The NCUA Board proposes adding a new § 701.20 to recognize that an FCU, as part of its incidental powers, may act as a guarantor or surety on behalf of a member. 12 U.S.C. 1757(17). Acting as a guarantor or surety on behalf of an FCU member meets the definition of an incidental power because it: Is convenient or useful to an FCU in extending credit to its members; is a logical extension of an FCU's authority to make loans to its members and to provide letters of credit on behalf of members; and involves risks that are similar in nature to the risks involved in an FCU's lending activity. 12 CFR 721.2.

The proposal notes that it does not apply to the guaranty of public deposits or the assumption of liability to pay member accounts. The FCU Act provides express authority for an FCU to guaranty public deposits. 12 U.S.C. 1767(b). The requirements governing the assumption of liability to pay member accounts are in the FCU Act. 12 U.S.C. 1757(b)(1)(B) and (3). Since an FCU may already engage in these activities under the authority and requirements in the FCU Act, it is not necessary to include these activities as part of this rulemaking.

The proposal defines suretyship, guaranty agreements and principal. While both a surety and a guarantor agree to be bound for the principal, there are distinctions. A principal is the ''person primarily liable, for whose performance of his obligation the guaranty or surety has become bound.'' *Blacks Law Dictionary* 1193 (6th ed. 1990). Under a suretyship agreement, a surety is bound with its principal to pay or perform an obligation to a third party. *Id.* at 1441–42. Under a guaranty agreement, on the other hand, the guarantor agrees to satisfy the obligation of the principal to another only if the principal fails to perform. *Id.* at 705. In addition, while a surety is usually bound with the principal by the same instrument, which is executed simultaneously by both the surety and the principal, a guarantor usually enters into a separate agreement with the third party, which the principal does not join. *Id.* at 1441–42. A guaranty agreement is usually entered into before or after that of principal and is often founded on a separate consideration from that supporting the contract of the principal. *Id.*

The proposal includes three requirements designed to ensure the safety and soundness of surety and guaranty agreements. The Board has the same safety and soundness concerns for FISCUs authorized under state law to enter into surety and guaranty agreements as it does for FCUs. Accordingly, the Board proposes to apply the requirements to FISCUs through new § 741.220. The requirements are modeled after the requirements in the Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS) rules on guaranty and suretyship. 12 CFR 7.1017 and 560.60.

The first two requirements are substantially similar to the requirements in the OTS rule. The first requires that the obligation under the agreement be limited to a fixed amount and limited in duration. Without a requirement to limit the amount and duration of the agreement, an FCU may take on more risk than it anticipated in the agreement.

The second provision requires that an FCU's performance under the agreement create a loan that is permissible under applicable law because the nature of a surety or guaranty agreement is a loan. The FCU is lending its credit and, in effect, is lending to its member. An FCU may not use a surety or guaranty agreement as a mechanism to avoid the applicable regulatory requirements for loans. These regulatory requirements are in place to ensure the safety and soundness of the transactions. For example, if an FCU will be a surety or guarantor for a member's obligation for a business loan, it must comply with the member business loan requirements. 12 CFR part 723.

This provision also highlights that an FCU must treat its obligation under the agreement as a contractual commitment to advance funds to the principal under the loans-to-one-borrower limits and loans to insider restrictions. 12 CFR 560.60(b)(3), 701.21(c)(5), (d) and 723.8. Again, these requirements are in place to ensure the safety and soundness of the transaction and should not be circumvented through the use of a surety or guaranty agreement.

The third provision addresses collateral requirements and parallels requirements in the OCC and OTS rules. Depending on the nature of the collateral, an FCU must have collateral equal to 100 or 110 percent of the obligation. The 100 percent collateral category includes cash, obligations of the United States or its agencies, obligations fully guaranteed by the United States or its agencies as to principal and interest, and notes, drafts, bills of exchange, and bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank. Because the value of some of these types of collateral can fluctuate, the proposal requires that the collateral have a market value at the close of each business day equal to 100 percent of the FCU's total potential liability.

The 110 percent collateral category includes real estate and marketable securities. If the collateral is real estate, an FCU must establish the value of the collateral by an evaluation or appraisal of the real estate consistent with NCUA's appraisal regulation. 12 CFR 722.3. If the collateral is marketable securities, an FCU must be authorized to invest in the securities and must ensure that the value of the securities is equal to 110 percent of the obligation at all times. To protect against risk of loss, an FCU must perfect its security interest in the collateral.

**B. Section 741.2—Maximum Borrowing Authority**

The NCUA Board proposes to amend § 741.2 to create a waiver process for FISCUs that want to exceed the general borrowing limitations in this section provided certain requirements have been met. The FCU Act limits an FCU's maximum borrowing authority to ''50 per centum of its paid-in and unimpaired capital and surplus.'' 12 U.S.C. 1757(9). In 1971, shortly after the passage of Title II of the FCU Act, which authorized the NCUA to provide share insurance, the Board issued regulations governing various aspects of the share insurance program. In particular, the Board, noting that some states had no limitations on borrowing, issued a regulation that made it a requirement for share insurance that all federally insured credit unions comply with the FCU Act's borrowing limitations. 36 FR 10844, June 4, 1971.

While safety and soundness concerns could potentially exist with an FISCU borrowing over the statutory limit for an FCU absent necessary safeguards to ensure due diligence by the FISCU and State and Federal supervisory review, the Board recognizes that it may be appropriate in certain circumstances and on a case-by-case basis to allow an FISCU to exceed the statutory limitation currently imposed on FCUs. The Board proposes allowing an FISCU to apply for a waiver from § 741.2 up to the amount permitted under State law or by the State regulator. Prerequisites for a waiver request include that appropriate safeguards must be in place and that either State law permits the higher limit than that specified in the FCU Act for which the FISCU seeks approval, which is verified by the State regulator, or the State regulator has duly approved a

higher limit than that allowed under State law. Instances in which it would seem appropriate to seek a waiver could include a situation where, for example, the borrowing has minimal risk associated with it but the FISCU is unable to enter into the transaction because of the regulatory prohibition. Circumstances presenting minimal risk could be, for example, a transaction where the FISCU is acting as a co-borrower with a member and the member has provided collateral sufficient to cover its obligation if the member defaults on the loan. The waiver process will permit regional directors to take into consideration the circumstances of the FISCU, its community, and members, and provide additional flexibility to address particular needs or benefits on a case-by-case basis. The proposed regulation contemplates that FISCUs wishing to engage in particular transactions, programs or projects, which would otherwise take their borrowings above the regulatory limitation, will have the opportunity to apply for a waiver, which will include a thorough explanation of the business purposes and strategies the FISCU has in place to mitigate risk, so that regional directors may make an informed determination regarding safety and soundness.

To apply for a waiver, an FISCU must submit its request to the appropriate regional director. The request must include a detailed analysis of the safety and soundness implications of the waiver, a proposed aggregate dollar amount or percentage of paid-in and unimpaired capital and surplus limitation, a letter from the State regulator approving the request, and an explanation demonstrating the need for a higher limit. The regional director will approve the waiver request if he or she determines that the proposed borrowing limit will not adversely affect the safety and soundness of the FISCU.

**C. Regulatory Procedures**

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities. NCUA considers credit unions having less than ten million in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87–2 as amended by IRPS 03–2. The NCUA has determined and certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. The proposal authorizes FCUs to enter into surety and guaranty agreements and permits FISCUs to request a waiver from the maximum borrowing limitation. It is unlikely that small credit unions will participate in either of these activities. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

*Paperwork Reduction Act*

The NCUA Board has determined that the proposal that would allow FISCUs to file for a waiver from the borrowing limitations in § 741.2 is covered under the Paperwork Reduction Act. NCUA is submitting a copy of this proposed rule to the Office of Management and Budget (OMB) for its review.

The NCUA Board estimates it will take an FISCU 8 hours on average to complete a waiver request. The NCUA Board also estimates, based on past interest in increased borrowing authority, that two FISCUs per year will request a waiver. Based on this, the NCUA Board estimates that the proposed rule will have an estimated net burden of 16 additional hours.

The Paperwork Reduction Act of 1995 and OMB regulations require that the public be provided an opportunity to comment on the paperwork requirements, including an agency's estimate of the burden of the paperwork requirements. The NCUA Board invites comment on: (1) Whether the paperwork requirements are necessary; (2) the accuracy of NCUA's estimate on the burden of the paperwork requirements; (3) ways to enhance the quality, utility, and clarity of the paperwork requirements; and (4) ways to minimize the burden of the paperwork requirements.

*Comments should be sent to:* OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20503; Attention: Joseph Lackey, Desk Officer for NCUA. Please send NCUA a copy of any comments you submit to OMB.

*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 will apply directly to federally insured state-chartered credit unions. NCUA has determined that the proposed amendments will not have a substantial direct effect 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 proposed 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*

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, Public Law 105–277, 112 Stat. 2681 (1998).

**D. Agency Regulatory Goal**

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

**List of Subjects**

*12 CFR Part 701*

Credit unions.

*12 CFR Part 741*

Credit unions, Requirements for insurance.

By the National Credit Union Administration Board on September 24, 2003.

**Becky Baker,**

*Secretary of the Board.*

For the reasons set forth in the preamble, the National Credit Union Administration proposes to amend 12 CFR parts 701 and 741 as follows:

## PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789.

2. Add new § 701.20 to read as follows:

### § 701.20 Suretyship and guaranty.

(a) *Scope.* This section authorizes a Federal credit union to enter into a suretyship or guaranty agreement as an incidental powers activity. This section does not apply to the guaranty of public deposits or the assumption of liability for member accounts.

(b) *Definitions.* A suretyship binds a Federal credit union with its principal

to pay or perform an obligation to a third person. Under a *guaranty* agreement, a Federal credit union agrees to satisfy the obligation of the principal only if the principal fails to pay or perform. The *principal* is the person primarily liable, for whose performance of his obligation the surety or guarantor has become bound.

(c) *Requirements.* The suretyship or guaranty agreement must be for the benefit of a principal that is a member and is subject to the following conditions:

(1) The Federal credit union limits its obligations under the agreement to a fixed dollar amount and a specified duration;

(2) The Federal credit union's performance under the agreement creates an authorized loan that complies with the applicable lending regulations, including the limitations on loans to one member or associated members or officials for purposes of §§ 701.21(c)(5), (d); 723.2 and 723.8; and

(3) The Federal credit union obtains a segregated deposit from the member that is sufficient in amount to cover the Federal credit union's total potential liability.

(d) *Collateral.* A segregated deposit under this section includes collateral:

(1) In which the Federal credit union has perfected its security interest (for example, if the collateral is a printed security, the Federal credit union must have obtained physical control of the security, and, if the collateral is a book entry security, the Federal credit union must have properly recorded its security interest); and

(2) That has a market value, at the close of each business day, equal to 100 percent of the Federal credit union's total potential liability and is composed of:

(i) Cash;

(ii) Obligations of the United States or its agencies;

(iii) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(iv) Notes, drafts, or bills of exchange or banker's acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank; or

(3) That has a market value equal to 110 percent of the Federal credit union's total potential liability and is composed of:

(i) Real estate, the value of which is established by a signed appraisal or evaluation in accordance with part 722 of this chapter. In determining the value of the collateral, the Federal credit union must factor in the value of any existing senior mortgages, liens or other encumbrances on the property except those held by the principal to the suretyship or guaranty agreement; or

(ii) Marketable securities that the Federal credit union is authorized to invest in. The Federal credit union must ensure that the value of the security is 110 percent of the obligation at all times during the term of the agreement.

## PART 741—REQUIREMENTS FOR INSURANCE

3. The authority citation for part 741 continues to read as follows:

**Authority:** 12 U.S.C. 1757, 1766(a), and 1781–1790; Pub. L. 101–73.

4. Amend § 741.2 by designating the existing paragraph as (a) and adding new paragraphs (b), (c) and (d) to read as follows:

### § 741.2 Maximum borrowing authority.

(a) * * *

(b) A federally insured State-chartered credit union may apply to the regional director for a waiver of paragraph (a) of this section up to the amount permitted under the applicable State law or by the State regulator. The waiver request must include:

(1) Written approval from the State regulator;

(2) A detailed analysis of the safety and soundness implications of the proposed waiver;

(3) A proposed aggregate dollar amount or percentage of paid-in and unimpaired capital and surplus limitation; and

(4) An explanation demonstrating the need to raise the limit.

(c) The regional director will approve the waiver request if the proposed borrowing limit will not adversely affect the safety and soundness of the federally insured State-chartered credit union.

5. Add new § 741.221 to read as follows:

### § 741.221 Suretyship and guaranty requirements.

Any credit union, which is insured pursuant to Title II of the Act, must adhere to the requirements in § 701.20 of this chapter. State-chartered, NCUSIF-insured credit unions may only enter into suretyship and guaranty agreements to the extent authorized under State law.

[FR Doc. 03–24761 Filed 9–30–03; 8:45 am]

BILLING CODE 7535–01–P

## NATIONAL CREDIT UNION ADMINISTRATION

## 12 CFR Part 708a

## Conversion of Insured Credit Unions to Mutual Savings Banks

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** NCUA proposes to update its rule regarding conversion of insured credit unions to mutual savings banks. This proposal, seeking to accomplish full disclosure and transparency, would require a converting credit union to provide additional information in the notice to members of its intent to convert. Specifically, the credit union would have to disclose any economic benefit a director or senior management official of a converting credit union may receive in connection with the conversion. The proposal also would require the converting credit union to disclose that conversion to a mutual savings bank could lead to members having diminished voting rights and losing their ownership interests in the credit union if the mutual savings bank subsequently converted to a stock institution and the members do not become stockholders. NCUA believes this proposal would enhance a member's ability to make informed decisions about the conversion without increasing the regulatory burden for converting credit unions and would help converting credit unions to more fully understand what NCUA expects to be included in the notice to members.

**DATES:** Comments must be received on or before December 1, 2003.

**ADDRESSES:** Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You are encouraged to fax comments to (703) 518–6319 or e-mail comments to *regcomments@ncua.gov* instead of mailing or hand-delivering them. Whatever method you choose, *please send comments by one method only.*

**FOR FURTHER INFORMATION CONTACT:** Frank S. Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

**SUPPLEMENTARY INFORMATION:**

### Background

The Credit Union Membership Access Act (CUMAA) was enacted into law on August 7, 1998. Pub. L. 105–21. Section 202 of CUMAA amended the provisions