PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.*, 347a, 347b, 347c, 348 *et seq.*, 357, 374, 374a, and 461.

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.[1]

(a) *Primary credit.* The interest rates for primary credit provided to depository institutions under § 201.4(a) are:

Federal Reserve Bank	Rate	Effective
Boston	0.50	December 17, 2008.
New York	0.50	December 16, 2008.
Philadelphia	0.50	December 18, 2008.
Cleveland	0.50	December 16, 2008.
Richmond	0.50	December 16, 2008.
Atlanta	0.50	December 16, 2008.
Chicago	0.50	December 16, 2008.
St. Louis	0.50	December 17, 2008.
Minneapolis	0.50	December 16, 2008.
Kansas City	0.50	December 16, 2008.
Dallas	0.50	December 17, 2008.
San Francisco	0.50	December 16, 2008.

(b) *Secondary credit.* The interest rates for secondary credit provided to depository institutions under 201.4(b) are:

Federal Reserve Bank	Rate	Effective
Boston	1.00	December 17, 2008.
New York	1.00	December 16, 2008.
Philadelphia	1.00	December 18, 2008.
Cleveland	1.00	December 16, 2008.
Richmond	1.00	December 16, 2008.
Atlanta	1.00	December 16, 2008.
Chicago	1.00	December 16, 2008.
St. Louis	1.00	December 17, 2008.
Minneapolis	1.00	December 16, 2008.
Kansas City	1.00	December 16, 2008.
Dallas	1.00	December 17, 2008.
San Francisco	1.00	December 16, 2008.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 22, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–30819 Filed 12–24–08; 8:45 am]

BILLING CODE 6210–01–P

[1] The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 712 and 741

RIN 3133—AD20

Credit Union Service Organizations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is issuing a final rule amending its credit union service organization (CUSO) regulation. The amendment adds two new categories of permissible CUSO activities: Credit card loan origination and payroll processing services. The amendment also adds new examples of permissible CUSO activities within existing categories and expands the permissible scope of certain services to include persons eligible for credit union membership. The amendment imposes new regulatory limits on the ability of credit unions to recapitalize their CUSOs in certain circumstances. Although the CUSO rule generally only applies to federal credit unions (FCUs), the amendment revises and extends to all federally insured credit unions the provisions ensuring that credit union regulators have access to books and records and that CUSOs are operated as separate legal entities; however, the rule also contains a procedure through which state regulators may seek an exemption from the access to records provisions for credit unions in their state. The amendment clarifies that CUSOs may buy and sell participations in loans they are authorized to originate. Finally, the amendment deletes as unnecessary the section in the current rule concerning amendment requests. These amendments clarify the rule, enhance CUSO operations, and address safety and soundness concerns.

DATES: This rule will become effective on January 28, 2009.

FOR FURTHER INFORMATION CONTACT: Ross P. Kendall, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

FCUs have the authority to lend up to 1% of their paid-in and unimpaired capital and surplus and to invest an equivalent amount in credit union organizations. 12 U.S.C.1757(5)(D), (7)(I). NCUA regulates this FCU lending and investing authority in the CUSO rule. 12 CFR Part 712. The CUSO rule permits an FCU to invest in or lend to a CUSO only if the CUSO primarily

serves credit unions, its membership, or the membership of credit unions contracting with the CUSO. 12 CFR 712.3(b).

NCUA's policy is to review its regulations periodically to ''update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'' Interpretive Ruling and Policy Statement (IRPS) 87–2, Developing and Reviewing Government Regulations. NCUA notifies the public about the review, which is conducted on a rolling basis, so that a third of its regulations are reviewed each year. This amendment is, in part, a result of NCUA's 2007 review under IRPS 87–2, which covered the middle third of the regulations, including part 712. The amendment is intended to update and clarify the regulation.

B. Proposed Rule

On April 17, 2008, the NCUA Board issued a proposed rule to amend Part 712. 73 FR 23982 (May 1, 2008). The proposal described each of the changes covered in this final rule, including a discussion of the reason for each change, and an invitation for public comment. NCUA also solicited comment on whether to change the rule to allow for a majority owner of a CUSO to conduct a consolidated opinion audit, although the Board was not proposing that change. The public comment period closed on June 30, 2008. NCUA received comments regarding the proposed changes from five credit unions, six national trade associations, eight state credit union trade associations, one law firm and four CUSOs, for a total of twenty-four comments. Of these, three commenters also addressed the consolidated opinion audit question.

Summary of Comments

A. General. Many commenters supported most aspects of the proposal, generally agreeing in principle with the approach of expanding CUSO authority and providing clarification through the addition of examples under approved categories, including the ability to buy and sell participations in loans they are authorized to make. Several commenters urged NCUA to expand authority by authorizing CUSOs to engage in any activity permissible for FCUs. Eight commenters specifically requested NCUA authorize CUSOs to make car loans, including direct lending and the purchase of retail installment sales contracts from vehicle dealerships, noting advantages that would flow to credit unions from the ability to consolidate and leverage in this business. Another commenter suggested NCUA authorize CUSOs to engage in payday lending as well.

The Board has elected not to expand CUSO lending authority beyond that which was proposed. A primary rationale for allowing CUSOs to engage in loan origination is, in some cases, such as business, student and real estate lending, a level of expertise that may not be attainable by individual credit unions is necessary for a successful loan program. While the Board is convinced successful administration of a credit card program requires this type of specialization and expertise, the same is not true in the case of vehicle lending, which most credit unions are able to manage successfully at the individual credit union level. In response to the comments suggesting CUSOs should be permitted to engage in any activity permissible for FCUs, the Board notes the statutory authority for FCU activities is separate from the authority granted to FCUs to lend to and invest in CUSOs, which provides CUSOs are ''primarily to serve the needs of member credit unions'' and provide ''services which are associated with the routine operations of credit unions.'' 12 U.S.C. 1757(5)(D), 1757(7)(I).

Some commenters questioned the wisdom and the authority of allowing CUSOs to expand into new areas. These commenters pointed out that NCUA lacks direct supervisory authority over CUSOs and other third party service providers and so suggested that expansions would lead to safety and soundness concerns. Two of these commenters also criticized what they characterized as continued erosion of the distinction between services that CUSOs may provide for credit unions and services that may be provided to credit union members and others. One commenter suggested the credit union charter is in danger of simply becoming a shell, permitting the ownership of businesses that are allowed to engage in virtually any pursuit available to the credit union.

B. Specific Comments and NCUA response. Upon consideration of the public comments, the NCUA Board has made some changes in the final rule. The specific comments and NCUA's responses are discussed in the following section-by-section analysis.

Expansion of certain services to persons within the field of membership. Several commenters supported the proposal to expand the range of individuals for whom CUSOs may provide certain types of services. Supporters noted their agreement with the logic in the proposal that the enactment of the Financial Services Regulatory Relief Act of 2006 (FSRRA; Pub. L. 109–351, sections 502–503; 120 Stat. 1966 (2006)), authorizing credit unions to provide certain services to individuals within their field of membership even though the individuals were not members, supports a parallel argument broadening the scope for CUSOs offering comparable services if primarily limited to the same population. A few suggested the categories of service be more closely correlated to the specific services authorized by FSRRA; one suggested the proposal be broadened, in view of the open-ended nature of the statutory term ''money transfer instrument'' as used in FSRRA.

Some commenters opposed the expansion, asserting that FSRRA makes no mention of CUSOs and, thus, the proposed expansion is unauthorized. One commenter, representing the banking industry, also challenged the basic premise underlying all CUSO services provided to natural persons, whether a credit union member or not. The commenter argued that the original intent of Congress in amending the FCU Act to allow FCUs to invest in or lend to CUSOs was that CUSOs would only provide services to credit unions, not to their members. The commenter also specifically criticized NCUA's reluctance to define what the term ''primarily serves'' means and noted that, in this context in particular, the potential for a significant expansion of CUSO services is present.

The Board has considered these arguments but has determined to proceed with the concept of creating an expanded scope of individuals who are eligible to receive certain CUSO services. With respect to the ''original intent'' argument, the Board notes that the FCU Act contains no restriction on FCUs making loans to or investing in a CUSO that provides services to natural persons as opposed to credit unions. An FCU may make a loan to a CUSO ''established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of credit unions.'' 12 U.S.C. 1757(5)(D). An FCU may invest in a CUSO ''providing services which are associated with the routine operation of credit unions.'' 12 U.S.C. 1757(7)(I). The legislative history cited by the commenter in support of its view relates only to the authority of FCUs to make loans to CUSOs. It has no bearing on the investment authority. Moreover, the referenced legislative history contains a listing of the types of services the committee members envisioned a CUSO would provide, and while most of the services listed are services typically provided to credit unions, the listing

also includes ''non-profit debt counseling services.'' H.R. Rep. No. 95–23, at 11 (1977), *reprinted in* 1977 U.S.C.C.A.N. 105, 115. Thus, the original listing of services includes a service that would only be provided to individuals. This service has been an approved CUSO category since the original CUSO rule was promulgated in 1979. Since that time, the rule has evolved and now includes numerous services that are intended to be provided to individuals.

With respect to the expansion of the scope argument, the Board notes the intention of FSRRA is to encourage FCUs to reach out to individuals in the community who have no formal relationship with a depository institution but who are in need of certain basic financial services, such as check cashing and wire transfer services. With the enactment of FSRRA, FCUs can offer these services to individuals regardless of their membership status, so long as they are within the FCU's field of membership. A CUSO's authority has always been derivative; since FSRRA has expanded the scope of services that FCUs may provide, the Board believes a parallel expansion for CUSOs is appropriate and supportable.

The Board has, however, re-evaluated the approach taken in the proposed rule and has determined to clarify and narrow the scope of this provision. The proposed rule simply noted that services covered in FSRRA ''correspond'' to the checking and currency services and the electronic transaction services categories in the CUSO rule. 73 FR 23982–83. The Board now believes that some, but not all, of the services described in these two categories correlate with the scope of FSRRA. The Board has determined some of the examples listed under these two categories in the CUSO rules, such as data processing, electronic income tax filing, and ATM services are not within the scope of services contemplated by the authority FSRRA granted to FCUs and that is the basis for the expansion for CUSOs. Moreover, the categories in the CUSO rule are not designed as defining limits, but rather are set out, with illustrative examples, to outline the types of services permissible for CUSOs. Therefore, the final rule clarifies the services CUSOs may provide to individuals who are not credit union members but simply within the field of membership by expressly referencing the regulation applicable to FCUs. Accordingly, the final CUSO rule cross-references § 701.30, which implements the FSRRA authority for FCUs, and indicates FCUs with a loan or an investment with a CUSO engaged in providing any of these particular services will be considered compliant with our rule to the extent the CUSO provides them primarily to persons within the FCU's field of membership.

Credit card loan origination. The majority of commenters supported this amendment, noting agreement with the advantages described in the preamble to the proposed rule, such as improved efficiencies and creation of an industry-based alternative for credit unions seeking to sell their portfolios. Other commenters, however, questioned the wisdom of this expansion, suggesting that NCUA lacked sufficient oversight authority for CUSOs and that the proposal would result in increased safety and soundness risks. The NCUA Board disagrees with the commenters who oppose this expanded authority for FCUs and, for the reasons stated in the preamble to the proposed rule, adopts the proposed amendment without change.

The Board notes, in this respect, concerns some commenters identified about an FCU's ability to acquire a participation interest in a portfolio consisting of credit card loans. In the preamble to the proposed rule, the Board observed that, given the revolving, open-end nature of credit cards, NCUA's loan participation rule would not support a sale to an FCU of a participation interest in a credit card portfolio. NCUA's loan participation rule contemplates an acquisition of a specific portion of a discrete loan or schedule of loans. 12 CFR 701.22. By its nature, a credit card portfolio consists of many individual, dynamic, credit relationships: typically, new card holders enter the pool underlying the portfolio, and credit limits for existing card holders in the pool may change. Under the loan participation rule, either event would require modifications to the original schedule of loans as well as approval from the credit union's board or investment committee. 12 CFR 701.22(d)(3), (4). Of equivalent concern, credit cards by their nature have no discrete maturity date. It is unclear how a participant, once having made its purchase, would know when its interest has matured and may be recouped. Without tracking specific payments received on specific accounts in the portfolio, a participant's interest appears to be more closely aligned with the overall performance of the portfolio than with any discrete segment of it. In this respect, it resembles an investment rather than a participation.

Extending examination and corporate separateness requirements to federally insured, state chartered credit unions (FISCUs). Several commenters opposed this aspect of the proposal. Some characterized it as unnecessary, while others objected to the increased compliance burden on credit unions. A few questioned whether NCUA has the authority to impose this requirement; one added that NCUA lacked expertise to conduct this type of review. The commenter representing state credit union regulators suggested NCUA should continue to rely primarily on cooperation with state regulators and should specifically exempt credit unions from compliance in states in which the regulatory structure is adequate. The commenter opposed an across the board application of the rule, noting that it could simply add another layer of regulation without an improvement in regulatory oversight. This commenter recognized the validity of NCUA's insistence on corporate separateness for all federally insured credit unions but asked that NCUA specifically set out the regulatory requirement in part 741, rather than incorporate the provisions by reference.[1] This commenter also advocated creation of thresholds for application of the rule, with certain types of business exempt from compliance and suggested the proposal not apply where a credit union simply has a loan to the CUSO or a de minimis investment.

In view of these comments, the Board has determined to adopt and incorporate into the rule a procedure whereby a state credit union regulator can request an exemption for FISCUs in that state from compliance with § 712.3(d)(3), based on a showing to the appropriate NCUA regional director of three things: first, current state law provides the regulator with full rights of access to relevant books and records of the CUSO; second, the regulator is willing and able to provide NCUA with equal access; and, third, access must be available to NCUA on its own timetable. The final version of § 712.10 incorporates these concepts. The procedure outlined here is similar to that which applies in the member business loan context and enables a state regulator to initiate a request for an exemption which, if approved by the NCUA Board, would exempt FISCUs chartered in that state from compliance

[1] Part 741, which sets out requirements for federal share insurance, is divided into two subparts: the first subpart has requirements on insurance applicable to both FCUs and state chartered credit unions not addressed elsewhere in the regulations. The second subpart part identifies and incorporates by reference provisions in other parts of the regulations, which apply to FCUs, that also apply, in whole or in part, to FISCUs.

with this requirement of the CUSO rule. *See* 12 CFR 723.20.

The Board has not adopted the other recommended restrictions the commenters advocated. The Board is not persuaded as to the merit of these other elements. Risk to the credit union derives from the transactions in which the CUSO is engaged, not the extent or character of the credit union's interest in it. While some lines of business for CUSOs are less risky than others, any CUSO engaged in a business affecting member money, member transactions, or member personal information presents a potential risk. Where a CUSO is engaged in a low volume, low risk venture, NCUA is unlikely to have a reason to insist on access to its books and records. Since it is the access, rather than the requirement of having an agreement with the CUSO, that presents the burden to institutions, the Board believes an exception based on line of business is likewise not warranted.

Reciprocity. The Board has retained the proposed change in § 712.3(d)(3), as discussed in the preamble to the proposed rule, to require an FCU's agreement with its CUSO to permit access not only to NCUA but also to any state regulator having supervisory responsibility over any FISCU that has a loan, an investment, or a contractual agreement for products or services with the CUSO. This requirement assures a regulator with responsibility for a credit union can review and evaluate the risk to which its institutions may be exposed. Even though NCUA enjoys a cooperative relationship with state credit union regulators and typically shares relevant information with them, the Board recognizes there may be circumstances in which access to books and records is useful or necessary for the state regulator. At the same time, the Board does not anticipate that extending the rule in this way will result in an inordinate number of requests for access by state regulators to CUSO books and records.

Transition Period for Compliance. The Board has also retained in the final rule the provisions in the proposal providing FISCUs with time to develop and enter agreements with their CUSOs and to obtain legal opinions addressing corporate separateness issues. Similarly, the final rule provides a transition period for FCUs with loans to or investments in CUSOs to make changes in the agreements they currently have with their CUSOs. As discussed in the proposal, the compliance date the rule establishes for each of these changes is not earlier than six months following the date of publication of the final rule in the **Federal Register**.

Prior approval for certain CUSO recapitalizations. Several commenters opposed this aspect of the proposal. Some suggested notice to NCUA, rather than prior approval, should be sufficient; one national trade association suggested changing the threshold below which approval is necessary to credit unions with a net worth of less than four percent. Notwithstanding these comments, for the safety and soundness reasons discussed in the preamble to the proposed rule, the Board has determined to retain this provision and adopts the amendment as proposed.

Elimination of specific amendment procedures in part 712. Half the commenters opposed eliminating the specific amendment procedures in § 712.7. Most indicated they prefer the unique procedure in the rule, even though a generic amendment procedure is available in part 791. Commenters noted they did not want to have to rely on the three-year rolling regulatory review underlying the generic amendment process and, also, that changes in the financial sector can occur rapidly and, therefore, the sixty-day time limits in the CUSO rule are preferable. One commenter suggested NCUA keep the unique amendment provisions but extend the applicable time limits if necessary.

Notwithstanding these comments, the Board has determined to eliminate the amendment provisions from part 712, as discussed in the preamble to the proposed rule. The Board notes, in this respect, that the generic amendment provisions in part 791 are not tied to the three-year cycle NCUA follows in reviewing its regulations. Members of the public may request an amendment to any rule, at any time, under the procedures in part 791. If circumstances warrant, NCUA is able to move quickly and can, if necessary, issue an interim final rule effective within a short time frame. 5 U.S.C. 553(b)(B). Accordingly, the separate amendment provisions in § 712.7 are redundant and unnecessary.

Payroll services. A substantial number of commenters supported this expansion. Banking industry commenters noted opposition, however, suggesting the change would serve to further erode what they see as the credit union's principal mission of serving individual consumers, especially those of modest means. The Board notes FCUs have provided services and support to their members who are entrepreneurs and small business owners for many years and enabling CUSOs to provide this service to those members is a logical, efficient expansion of CUSO authority. Accordingly, the Board is adopting this amendment as proposed.

Additional Examples of Permissible Activities Within Approved Categories. The proposed rule outlined several new examples of permissible CUSO activities related to the routine daily operation of credit unions, including real estate settlement services, employee leasing and support, purchase of non-performing loans, business counseling and related services for credit union business members, and referral and processing of loan applications for members turned down by the credit union. The Board has determined to include each of these examples in the final rule.

The Board has received requests during the comment period for this rulemaking and previously to consider permitting CUSOs to provide stored value products, such as gift cards, pre-paid credit cards, postage stamps, transportation tokens, and so forth, to credit union members. Although not included specifically in the proposed rule, the Board concludes that stored value products should be added as an illustration under § 712.5(a), Checking and currency services. Section 712.5(a) is amended to add a new example titled ''stored value products.'' The Board intends stored value products in part 712 to have the same meaning as provided in the incidental powers rule for FCUs. 12 CFR 721.3(k). Currently, CUSOs provide check cashing, currency services, and sale of money orders under § 712.5(a)(1), (2), and (3). The Board believes permitting persons to convert their funds into stored value products may, in many instances, provide a safer and more convenient transaction. Like many of the CUSO services, the Board also believes selling stored value products, such as gift cards, pre-paid credit cards, postage stamps, transportation tokens, and similar media, is not an economical endeavor for individual credit unions yet is one that credit unions would like to make available. Therefore, this additional example is added in the final rule.

Loan Participations. For the reasons outlined in the proposed rule, the Board has also determined to include in the final rule the clarifying amendment specifying that CUSOs are authorized to buy and sell participations in loans they are authorized to make.

Other aspects. Two commenters expressed support for allowing a credit union with a majority ownership interest in a CUSO to obtain a consolidated opinion audit. Another commenter, noting the expense of procuring an opinion audit can be significant, suggested the rule be revised by incorporating a de minimis threshold. The commenter suggested the

rule should provide that a non-opinion audit be given to investors with less than a controlling interest (the commenter suggested less than 20% ownership as the measure) but at least $50,000 and a separate opinion audit only be required where the interest is at least $200,000.

The Board has determined not to adopt this modification for the following reasons. A financial statement audit provides the advantage of an independent, qualified and licensed third party attesting to the fair presentation of the CUSO's financial statements in accordance with generally accepted accounting principles as of a given date. A third party relies on this opinion in conducting its due diligence surrounding an investment decision. A non-opinion audit by either a licensed or unlicensed person does not provide that opinion the Board is seeking to guide credit union investment decisions.

CUSOs that must consolidate their financial statements with a parent credit union owner already receive a consolidated financial statement audit. Expanding the scope of that engagement to include a separate, CUSO-only financial statement audit does not double the cost. CUSOs that are not required to consolidate their financial statements with a parent credit union already must obtain a separate financial statement audit, so the current rule does not impose substantial, additional burden on CUSOs.

Finally, the Board notes that the numbering and placement of new or updated authorities in § 712.5 are different than were proposed. The final rule maintains the numbering and placement in the current rule by adding the two new subsections at the end of the existing rule, rather than in the middle. This should eliminate confusion where interested parties make reference to particular provisions in the future. The Board believes these changes are consistent with its ongoing efforts to reduce regulatory burden while assuring that credit unions operate in a safe and sound manner.

Regulatory Procedures

Regulatory Flexibility Act

As noted in the proposed rule, 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 dollars in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87–2 as amended by IRPS 03–2. The proposed changes to the CUSO rule impose minimal compliance obligations by requiring credit unions to comply with certain one-time regulatory requirements concerning agreements with CUSOs and maintenance of separate corporate identities. Of the 3,599 credit unions (FCUs and FISCUs) with assets of less than ten million dollars that filed a form 5300 call report with NCUA as of December 31, 2007, only 195 reported any interest in a CUSO. Since approximately only 5.5% of credit unions meeting the small credit union definition reported having any interest in CUSOs of any type, NCUA has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that an RFA analysis is not required.

Paperwork Reduction Act

The final rule contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), NCUA submitted a copy of the proposed amendments as part of an information collection package to the Office of Management and Budget (OMB) for its review and approval of a modification of any existing collection of information. On November 25, 2008, the OMB approved the modification request and re-assigned the collection Control Number 3133–0149.

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 major aspects of the rule apply only to federally-chartered credit unions. There is some impact on state chartered, federally-insured credit unions. By law, these institutions are already subject to numerous provisions of NCUA's rules, based on the agency's role as the insurer of member share accounts and the significant interest NCUA has in the safety and soundness of their operations. In developing the proposal and the final rule, NCUA worked closely with representatives of the state credit union regulatory community. The final rule incorporates a mechanism by which states may request an exemption from coverage of the rule for institutions in that state, provided certain criteria are met. In any event, the final rule will not have substantial direct effects on the states, on the relationship 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 proposal 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 proposed rule will 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).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement 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

12 CFR Part 712

Administrative practices and procedure, Credit, Credit unions, Investments, Reporting and recordkeeping requirements.

12 CFR Part 741

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

By the National Credit Union Administration Board on December 18, 2008.

Mary F. Rupp,

Secretary of the Board.

■ Accordingly, NCUA amends 12 CFR parts 712 and 741 as follows:

Part 712—CREDIT UNION SERVICE ORGANIZATIONS (CUSOs)

■ 1. The authority citation for part 712 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786.

■ 2. Amend § 712.1 by revising the last sentence to read as follows:

§ 712.1 What does this part cover?

* * * Sections 712.3(d)(3) and 712.4 of this part apply to state-chartered credit unions and their subsidiaries, as provided in § 741.222 of this chapter.

■ 3. Amend § 712.2 by adding a new paragraph (d)(3) to read as follows:

§ 712.2 How much can an FCU invest in or loan to CUSOs, and what parties may participate?

* * * * *

(d) * * *

(3) *Special rule in the case of less than adequately capitalized FCUs.* This paragraph (d)(3) applies in the case of either an FCU that is currently less than adequately capitalized, as determined under part 702, or where the making of an investment in a CUSO would render the FCU less than adequately capitalized under part 702. Before making an investment in a CUSO, the FCU must obtain prior written approval from the appropriate NCUA regional office if the making of the investment would result in an aggregate cash outlay, measured on a cumulative basis (regardless of how the investment is valued for accounting purposes) in an amount in excess of one percent of the credit union's paid in and unimpaired capital and surplus.

* * * * *

§ 712.3 [Amended]

■ 4. Amend § 712.3 as follows:

■ a. Amend paragraph (b) by removing the period at the end of the sentence and adding the phrase ''; *provided, however,* that with respect to any approved CUSO service, as set out in § 712.5, that also meets the description of services set out in § 701.30 of this chapter, this requirement is met if the CUSO primarily provides such services to persons who are eligible for membership in the FCU or are eligible for membership in credit unions contracting with the CUSO.'' in its place.

■ b. Revise paragraph (d)(3) to read as follows:

§ 712.3 What are the characteristics of and what requirements apply to CUSOs?

* * * * *

(d) * * *

(3)(i) Provide NCUA, its representatives, and the state credit union regulatory authority having jurisdiction over any federally insured, state-chartered credit union with an outstanding loan to, investment in or contractual agreement for products or services with the CUSO with complete access to any books and records of the CUSO and the ability to review CUSO internal controls, as deemed necessary by NCUA or the state credit union regulatory authority in carrying out their respective responsibilities under the Act and the relevant state credit union statute.

(ii) The effective date for compliance with this section is June 29, 2009.

* * * * *

■ 5. Amend § 712.5 as follows:

■ a. Amend paragraph (a)(2) by removing the word ''and'' after the semicolon;

■ b. Amend paragraph (a)(3) by adding ''and'' after the semicolon;

■ c. Add a new paragraph (a)(4);

■ d. Amend paragraph (b)(9) by removing the word ''and'' after the semicolon;

■ e. Amend paragraph (b)(10) by adding ''and'' after the semicolon;

■ f. Add a new paragraph (b)(11);

■ g. Amend paragraph (c) by removing the semicolon at the end of the sentence and replacing it with the phrase: '', including the authority to buy and sell participation interests in such loans;''

■ h. Amend paragraph (d) by removing the semicolon at the end of the sentence and replacing it with the phrase: '', including the authority to buy and sell participation interests in such loans;''

■ i. Amend paragraph (f)(5) by removing the word ''and'' after the semicolon ;

■ j. Amend paragraph (f)(6) by adding ''and'' after the semicolon;

■ k. Amend paragraph (h)(2) by removing the word ''and'' after the semicolon;

■ l. Amend paragraph (h)(3) by adding ''and'' after the semicolon;

■ m. Amend paragraph (j)(2) by removing the word ''and'' after the semicolon;

■ n. Amend paragraph (j)(3) by adding ''and'' after the semicolon;

■ o. Add new paragraphs (f)(7), (h)(4), and (j)(4) through (j)(6);

■ p. Amend paragraph (n) by removing the semicolon at the end of the sentence and replacing it with the phrase: '', including the authority to buy and sell participation interests in such loans;''

■ o. Add new paragraphs (s) and (t).

The additions read as follows:

§ 712.5 What activities and services are preapproved for CUSOs?

* * * * *

(a) * * *

(4) Stored value products.

(b) * * *

(11) Employee leasing services

* * * * *

(f) * * *

(7) Business counseling and consultant services;

* * * * *

(h) * * *

(4) Real estate settlement services;

* * * * *

(j) * * *

(4) Real estate settlement services;

(5) Purchase and servicing of non-performing loans; and

(6) Referral and processing of loan applications for members whose loan applications have been denied by the credit union;

* * * * *

(s) Credit card loan origination;

(t) Payroll processing services.

§ 712.7 [Removed and Reserved]

■ 6. Remove and reserve § 712.7.

■ 7. Add a new § 712.10 to read as follows:

§ 712.10 How can a state supervisory authority obtain an exemption for state chartered credit unions from compliance with § 712.3(d)(3)?

(a) The NCUA Board may exempt federally insured credit unions in a given state from compliance with § 712.3(d)(3) if the NCUA Board determines the laws and procedures available to the supervisory authority in that state are sufficient to provide NCUA with the degree of access to CUSO books and records it believes is necessary to evaluate the safety and soundness of credit unions having business relationships with CUSOs owned by credit union(s) chartered in that state.

(b) To obtain the exemption, the state supervisory authority must submit a copy of the legal authority pursuant to which it secures access to CUSO books and records to NCUA's regional office having responsibility for that state, along with all procedural and operational documentation supporting and describing the actual practices by which it implements and exercises the authority.

(c) The state supervisory authority must also provide the regional director with an assurance that NCUA examiners will be provided with co-extensive authority and will be allowed direct access to CUSO books and records at such times as NCUA, in its sole discretion, may determine necessary or appropriate. For purposes of this section, access includes the right to make and retain copies of any CUSO record, as to which NCUA will accord the same level of control and confidentiality that it uses with respect to all other examination-related materials it obtains in the course of its duties.

(d) The regional director will review the applicable authority, procedures and assurances and forward the exemption

request, along with the regional director's recommendation, to the NCUA Board for a final determination.

(e) For purposes of this section, whether an entity is a CUSO shall be determined in accordance with the definition set out in § 741.222 of this chapter.

PART 741—REQUIREMENTS FOR INSURANCE

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

Authority: 12 U.S.C. 1757, 1766, 1781–1790, and 1790d.

■ 9. Add a new § 741.222 to read as follows:

§ 741.222. Credit union service organizations.

(a) Any credit union that is insured pursuant to Title II of the Act must adhere to the requirements in § 712.3(d)(3) and § 712.4 of this chapter concerning agreements between credit unions and their credit union service organizations (CUSOs) and the requirement to maintain separate corporate identities. For purposes of this section, a CUSO is any entity in which a credit union has an ownership interest or to which a credit union has extended a loan and that is engaged primarily in providing products or services to credit unions or credit union members, or, in the case of checking and currency services, including check cashing services, sale of negotiable checks, money orders, and electronic transaction services, including international and domestic electronic fund transfers, to persons eligible for membership in any credit union having a loan, investment or contract with the entity.

(b) This section shall have no preemptive effect with respect to the laws or rules of any state providing for access to CUSO books and records or CUSO examination by credit union regulatory authorities.

(c) The effective date for compliance with this section is June 29, 2009.

[FR Doc. E8–30602 Filed 12–24–08; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0716; Airspace Docket No. 08–ASW–9]

Establishment of Low Altitude Area Navigation T–254; Houston, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This action delays the effective date for the establishment of the low altitude Area Navigation (RNAV) T-route, designated T–254, in the vicinity of the Houston, TX, terminal area until March 12, 2009. The FAA is taking this action to allow additional time for processing and charting.

DATES: *Effective Date:* 0901 UTC. The effective date of January 15, 2009, is delayed to March 12, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On November 18, 2008, the FAA published in the **Federal Register** a final rule establishing the low altitude RNAV route T–254, in the vicinity of the Houston, TX, terminal area (73 FR 68317). This rule was originally scheduled to become effective January 15, 2009; however, a need for additional internal processing requires a delay in the effective date until March 12, 2009.

The Rule

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes an RNAV T-Route in the vicinity of Houston, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Delay of Effective Date

■ The effective date of the final rule, Docket FAA–2008–0716; Airspace Docket 08–ASW–9, as published in the **Federal Register** on November 18, 2008 (73 FR 68317), is hereby delayed until March 12, 2009.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

* * * * *

Issued in Washington, DC, on December 12, 2008.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E8–30635 Filed 12–24–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2004–17005; Amendment No. 93–91]

RIN 2120–AI17

Washington, DC Metropolitan Area Special Flight Rules Area; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.