7. In § 72.122, paragraphs (h)(4) and (i) are revised to read as follows:

§ 72.122 Overall requirements.

* * * * *

(h) * * *

(4) Storage confinement systems must have the capability for continuous monitoring in a manner such that the licensee will be able to determine when corrective action needs to be taken to maintain safe storage conditions. For dry spent fuel storage, periodic monitoring is sufficient provided that periodic monitoring is consistent with the dry spent fuel storage cask design requirements. The monitoring period must be based upon the spent fuel storage cask design requirements.

* * * * *

(i) *Instrumentation and control systems.* Instrumentation and control systems for wet spent fuel storage must be provided to monitor systems that are important to safety over anticipated ranges for normal operation and off-normal operation. Those instruments and control systems that must remain operational under accident conditions must be identified in the Safety Analysis Report. Instrumentation systems for dry spent fuel storage casks must be provided in accordance with cask design requirements to monitor conditions that are important to safety over anticipated ranges for normal conditions and off-normal conditions. Systems that are required under accident conditions must be identified in the Safety Analysis Report.

* * * * *

8. In § 72.124, paragraph (b) is revised to read as follows:

§ 72.124 Criteria for nuclear criticality safety.

* * * * *

(b) *Methods of criticality control.* When practicable, the design of an ISFSI or MRS must be based on favorable geometry, permanently fixed neutron absorbing materials (poisons), or both. Where solid neutron absorbing materials are used, the design must provide for positive means of verifying their continued efficacy. For dry spent fuel storage systems, the continued efficacy may be confirmed by a demonstration or analysis before use, showing that significant degradation of the neutron absorbing materials cannot occur over the life of the facility.

* * * * *

9. In § 72.140, paragraph (d) is revised to read as follows:

§ 72.140 Quality assurance requirements.

* * * * *

(d) *Previously approved programs.* A Commission-approved quality assurance program which satisfies the applicable criteria of appendix B to part 50 of this chapter and which is established, maintained, and executed with regard to an ISFSI will be accepted as satisfying the requirements of paragraph (b) of this section, except that a licensee using an appendix B quality assurance program also shall meet the requirement of § 72.174 for recordkeeping. Prior to initial use, the licensee shall notify the Commission, in accordance with § 72.4, of its intent to apply its previously approved appendix B quality assurance program to ISFSI activities. The licensee shall identify the program by date of submittal to the Commission, docket number, and date of Commission approval.

10. In § 72.216, paragraph (c) is revised to read as follows:

§ 72.216 Reports.

* * * * *

(c) The general licensee shall make initial and written reports in accordance with §§ 72.74 and 72.75, except for the events specified by § 72.75(b)(2) and (3) for which the initial reports will be made under paragraph (a) of this section.

Dated at Rockville, Maryland, this 15th day of June, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–15793 Filed 6–21–99; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703 and 712

Investment and Deposit Activities; Credit Union Service Organizations

AGENCY: National Credit Union Administration (NCUA)

ACTION: Final rule.

SUMMARY: The final rule makes four changes to the recently revised rule concerning federal credit unions' (FCUs') investments in and loans to credit union service organizations (CUSOs). The four changes are: First, delete a provision preventing FCUs from investing in or lending to CUSOs in which non-credit union depository institutions are co-investors or lenders; second, revise a provision limiting CUSO investments in non-CUSO service providers; third, delete a provision preventing FCUs from investing in the debentures of a CUSO; and fourth, clarify how the NCUA measures the limit on an FCU's investment in or loans to CUSOs. In addition, the final rule clarifies the meaning of cyber financial services. The changes decrease the regulatory burden for FCUs investing in or lending to CUSOs.

DATES: This rule is effective July 22, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540; or Linda Groth, Program Officer, Office of Examination and Insurance, at the above address or telephone (703) 518–6360.

SUPPLEMENTARY INFORMATION:

Background

On November 19, 1998, the NCUA Board requested comment on proposed changes to part 712 of its regulations. 63 FR 65714 (November 30, 1998). Part 712 sets forth the requirements for FCUs investing in or lending to CUSOs. The proposed amendments addressed four issues resulting from the March 1998 revisions to the CUSO rule. 63 FR 10743 (March 5, 1998). The Board also requested comment on the scope of services that should be included within the existing cyber financial services category of the CUSO rule.

Summary of Comments

The NCUA Board received twenty comments on the proposal: nine from credit unions; three from CUSOs; two from credit union trade groups; one from a CUSO trade group; one from a bank trade group; three from state leagues; and one from an attorney. Of the fourteen commenters that addressed the proposed changes, thirteen generally supported the added flexibility of the proposed amendments.

FCUs Investing in or Lending to a CUSO in Which a Bank or Thrift Is Also a Participant

Section 712.2(c) prohibits an FCU from investing in or lending to a CUSO in which one or more banks or thrift institutions participate. The rationale behind the limitation was that it would be too confusing to credit union members if both NCUSIF and FDIC signs were posted together at shared branches. 63 FR at 10746. The Board believes possible confusion can be addressed through appropriate disclosures and so the proposal removed the prohibition.

The commenters generally supported the added flexibility of this amendment. There were two negative commenters. One was a bank trade group that objected because it believes the

requirement that CUSOs primarily serve credit unions or their members will be too hard to monitor if banks and thrifts are allowed to participate. The bank trade group also objected on the basis that insurance disclosures for this type of CUSO would be too burdensome. The Board rejects these arguments. The disclosure issue for federally insured credit unions is currently addressed in § 740.3(c) of NCUA's regulations. The CUSO rule currently allows credit unions to participate with other entities, just not banks or thrifts. This participation has not led to a problem in monitoring the ''primarily serves'' requirement, and the Board does not anticipate a problem when banks and thrifts are added. One commenter was concerned that NCUA would no longer be able to regulate CUSOs if banks and thrifts were allowed to participate. Inasmuch as NCUA does not currently regulate CUSOs, the Board determined that this concern was not justified.

CUSO Investment in Other Service Providers

Section 712.3(b) limits a CUSO investing in a service provider not meeting the customer base requirement to the minimum amount necessary to provide the service. The NCUA Board does not believe it is necessary to be so restrictive in limiting the amount a CUSO can invest. It proposed limiting the amount to the amount necessary to participate in the service provider or a greater amount if necessary to obtain a reduced price for goods or services.

All of the commenters but the bank trade group were in support of this added flexibility, and three commenters suggested even greater flexibility. One commenter suggested that FCUs also be permitted to invest in non-CUSO service providers. There is no statutory authority for this type of investment. Another commenter recommended deleting any investment restriction on CUSOs, and a third commenter suggested expanding a CUSO's investment authority up to the amount necessary ''to obtain a board of director position or policy input in the service provider.''

In contrast, the bank trade group objects to a CUSO having the potential to gain a controlling interest in a non-CUSO service provider and recommends limiting the investment to a passive interest. Its position is that CUSOs should be limited as much as possible because of the tax exempt status of FCUs. The final rule allows CUSOs to invest so that they can provide goods and services to their customers at competitive prices without losing sight of the fact that CUSOs cannot function as an investment vehicle for FCUs to invest in what would otherwise be an impermissible investment. Accordingly, the Board thinks the proposal struck the appropriate balance and has adopted that approach in the final rule.

FCUs Investing in the Debentures of a CUSO

Section 712.2(a) limits an FCU's investment in a CUSO structured as a corporation to the equity of a corporation. Although this provision was intended as a clarification, it has the effect of prohibiting an FCU from investing in the debentures of a CUSO structured as a corporation. The proposal removed this prohibition. The one commenter that specifically referenced this amendment was in support of it.

FCUs Accounting in Accordance With GAAP

The proposed change clarified that generally accepted accounting principles (GAAP) are to be used in accounting for an FCU's investment in and loans to a CUSO both for the regulatory limitations under § 712.2 and the financial statement amounts under § 712.3. However, it does not require divestiture or prohibit future investments if the regulatory limitation is exceeded under the equity method without any additional cash outlay.

The commenters generally supported this change because ''it maintains consistency in the accounting treatment of CUSOs and avoids the undesired possibility of penalizing success.'' One commenter objected and two commenters had drafting suggestions. The negative commenter maintains that if the investment in the CUSO is less than .5% of total credit union assets, the credit union should be permitted to use aggregate cash outlay since the material effect would be insignificant. However, § 201(a) of the Credit Union Membership Access Act (CUMAA), Pub. L. No. 105–219, 112 Stat. 918 (1998), requires credit unions having assets of $10 million or more to follow GAAP in all reports or statements filed with the Board. 12 U.S.C. 1782(a)(6)(C). Therefore, the requirement that all FCUs use GAAP in accounting for their investment and loans to CUSOs is consistent with the new accounting requirements of CUMAA and, even for investments below the regulatory limit will insure that future growth or diminution in the investment are fairly reported in FCU financial statements.

Cyber Financial Services

The NCUA Board also requested comment on § 712.5(d)(8) which lists cyber financial services as a permissible CUSO activity. The Board received thirteen comments on this issue. The preamble to the current rule described cyber financial services as ''credit union member financial services that are analogous to services performed for credit union members in a credit union branch and not unrelated services.'' 63 FR at 10753. The NCUA Board specifically requested comment on the scope of services that should be included within the category of cyber financial services.

Six of the commenters opposed having a list of specific permissible services because they thought it would be too limiting and, with changing technology, would rapidly become outdated. The Board agrees with these concerns. The Board also agrees that the limitations described in the preamble to the March 1998 rule are too restrictive. The Board's intent is that CUSOs be permitted to provide to credit unions and their members electronic delivery of any permissible CUSO service and electronic delivery of any permissible credit union service.

Some commenters noted that credit unions need to be able to offer Internet access to their members to market their services effectively and compete in the financial marketplace. Therefore, in addition to allowing CUSOs to provide currently permissible financial services electronically, the Board, similar to a Federal Reserve Board determination, will allow CUSOs to provide FCUs and their members an electronic link to an Internet access provider as part of providing currently permissible financial services electronically. *Royal Bank of Canada, Montreal, Canada, et al.,* Order Approving Notices to Engage in Nonbanking Activities, Federal Reserve Board (December 2, 1996). CUSOs providing Internet access would be limited to providing access through an electronic link to their member credit unions, which in turn would offer Internet access to their members, only as part of a broader package of credit union or financial services. This is an example of an activity that would be considered incidental to permissible cyber financial services.

Group Purchasing

Although comment was not requested on this issue, one commenter suggested that CUSOs be allowed to provide group purchasing for FCU members to the same extent as FCUs under part 721 of NCUA's regulations. Although the

commenter cites the statutory limitations placed on CUSOs to provide a service that ''relates to the daily operations of the credit unions they serve'' or ''the routine operations of credit unions,'' the commenter ignores the implications of these limitations by arguing that CUSOs should be allowed to market any service provided by a third party vendor. 12 U.S.C. 1757 (5)(D) and (7)(I). The Federal Credit Union Act (Act) prohibits the commenter's broad interpretation of permissible CUSO activities.

Section by Section Analysis

Section 712.2(c) is revised to read: ''A federal credit union may invest in or loan to a CUSO by itself, with other credit unions, or with non-credit union parties.'' This language is substantially the same as the rule prior to the March 1998 revision. In addition, the final rule removes a cross-reference in the current version of § 712.2(c) to § 712.6. Section 712.6 stands on its own to implement the statutory prohibition against using the CUSO authority to acquire control of certain other organizations such as trade associations and other depository institutions. 12 U.S.C. 1757(7)(I).

Section 712.3(b) of the current rule limits the amount a CUSO can invest in other service providers to the minimum amount necessary to provide the service. The revised language concerning service providers permits CUSO investments in non-CUSO service providers if the investment is limited to the amount necessary to participate in the service provider or a greater amount if necessary to obtain a reduced price for goods or services, for the CUSO, its credit unions, or the credit unions' members. The intent of this provision is to allow a CUSO to invest as much as is necessary to obtain an economic advantage on the goods or services it is receiving. CUSOs would not be permitted to use this provision as independent investment authority.

NCUA believes it would be clearer for this provision to be set out in that portion of the regulation addressing permissible activities rather than in the section addressing customer base. NCUA is moving this provision from the customer base section of the rule, § 712.3(b), and adding it as a new subsection (p) to § 712.5 concerning permissible CUSO activities and services.

The third change concerns § 712.2(a) of the current rule that limits an FCU's investment in a CUSO structured as a corporation to the equity of the corporation. The preamble to the March 1998 rule explains that this limitation was a clarification. 63 FR at 10745. However, this provision has the effect of prohibiting an FCU from investing in the debentures of a CUSO structured as a corporation, a practice that was previously permissible. NCUA is eliminating this provision because the limitation is more restrictive than the Act, which permits FCUs to invest in the obligations of a CUSO. 12 U.S.C. 1757(7)(I).

Currently, § 712.2(a) states that an FCU can only invest in a limited partnership as a limited partner. This provision is more related to the permissible structure of a CUSO than permissible investments in a CUSO. NCUA believes this provision would be clearer if it is moved from § 712.2(a) to § 712.3(a). In addition, the provision limiting an FCU's investment in a limited liability company to membership is deleted because it is unnecessary.

This Board is revising §§ 712.2 and 712.3 to clarify that GAAP is to be used in accounting for an FCU's investments in and loans to a CUSO both for purposes of accounting for the regulatory limitations under § 712.2 and the financial statement amounts under § 712.3. The final rule does not require divestiture or prohibit future investments if the regulatory limitation is exceeded under the GAAP equity method without any additional cash outlay.

To accomplish this, new subsections (d) and (e) have been added to § 712.2. Subsection (d) includes the definition of ''paid-in and unimpaired capital and surplus'' that was formerly in subsection (a) and adds the requirement that total investments in and loans to the CUSO be measured consistent with GAAP for regulatory purposes. Section 712.3(c) is revised by adding ''for financial reporting purposes'' to the title.

As explained in the proposal, an example of how the rule will be applied is if an FCU owns 45% of a CUSO and the CUSO has an annual net income of $50,000, the equity method requires an FCU to book a $22,500 addition to its ''investments in and loans to CUSO'' asset account. If by doing so, the regulatory limitation is reached or exceeded, NCUA will not require divestiture.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under 1 million in assets). The NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. The reason for this determination is that the amendments to the rule reduce regulatory burden. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This final rule has no effect on reporting requirements in part 712.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The CUSO regulation applies only to FCUs. Thus, the NCUA Board has determined that this rule does not constitute a ''significant regulatory action'' for purposes of the Executive Order. NCUA will continue to work with the state credit union supervisors to achieve shared goals concerning CUSOs with both FCU and state-chartered credit union participation.

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 Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and determined that, for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, this is not a major rule.

List of Subjects

12 CFR Part 703

Credit unions, Investments.

12 CFR Part 712

Administrative practices and procedure, Credit, Credit unions, Investments, Reporting and record keeping requirements.

By the National Credit Union Administration Board on June 14, 1999.

Becky Baker,

Secretary of the Board.

For the reasons stated in the preamble, the NCUA amends 12 CFR chapter VII as follows:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

1. The authority citation for part 703 will continue to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8) and 1757(15).

§ 703.20 [Amended]

2. Section 703.20 is amended in paragraph (c) by revising ''§ 701.27'' to read ''part 712.''

PART 712—CREDIT UNION SERVICE ORGANIZATIONS

3. The authority citation for part 712 will continue to read as follows:

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

4. Amend § 712.2 by revising the section heading, removing the second and third sentences of paragraph (a), revising paragraph (c) and adding paragraphs (d) and (e) to read as follows:

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

* * * * *

(c) *Parties.* An FCU may invest in or loan to a CUSO by itself, with other credit unions, or with non-credit union parties.

(d) *Measurement for calculating regulatory limitation.* For purposes of paragraphs (a) and (b) of this section: paid-in and unimpaired capital and surplus means shares and undivided earnings; and total investments in and total loans to CUSOs will be measured consistent with GAAP.

(e) *Divestiture.* If the limitations in paragraph (a) of this section are reached or exceeded because of the profitability of the CUSO and the related GAAP valuation of the investment under the equity method, without an additional cash outlay by the FCU, divestiture is not required. An FCU may continue to invest up to 1% without regard to the increase in the GAAP valuation resulting from a CUSO's profitability.

5. Amend § 712.3 by adding a new sentence following the first sentence of paragraph (a), by removing the second sentence of paragraph (b) and by revising the title of paragraph (c) to read as follows:

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

(a) *Structure.* * * * An FCU can invest in or loan to a CUSO only if the CUSO is structured as a corporation, limited liability company, or limited partnership. An FCU may only participate in a limited partnership as a limited partner. * * *

* * * * *

(c) *Federal credit union accounting for financial reporting purposes.* * * *

* * * * *

6. In § 712.5 add paragraph (p) to read as follows:

§ 712.5 What activities and service are preapproved for CUSO

* * * * *

(p) *CUSO investments in non-CUSO service providers:* In connection with providing a permissible service, a CUSO may invest in a non-CUSO service provider. The amount of the CUSO's investment is limited to the amount necessary to participate in the service provider, or a greater amount if necessary to receive a reduced price for goods or services.

[FR Doc. 99–15650 Filed 6–21–99; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 712

Credit Union Service Organizations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: The interim final rule provides a grandfather exemption for real estate brokerage services if a credit union service organization (CUSO) was providing that service prior to April 1, 1998, and requests comment on that exemption and whether real estate brokerage services should be reinstated as a permissible CUSO service.

DATES: This rule is effective July 22, 1999. Comments must be received on or before August 20, 1999.

ADDRESSES: Comments should be directed 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. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540; or Linda Groth, Program Officer, Office of Examination and Insurance, at the above address or telephone (703) 518–6360.

SUPPLEMENTARY INFORMATION:

Background

On November 19, 1998, the NCUA Board requested comment on proposed changes to part 712 of its regulations. 63 FR 65714 (November 30, 1998). Part 712 sets forth the requirements for FCUs investing in or lending to CUSOs. The NCUA Board is issuing a separate final rule adopting the proposed amendments.

Although the Board did not request comment on the issue of real estate brokerage services, eight commenters objected to the Board's removal in March 1998 of real estate brokerage services from the list of permissible services. 12 CFR 712.6(b). The March rule allows a CUSO currently providing this service to continue until April 1, 2001. 12 CFR 712.9. In the alternative, the commenters requested that CUSOs currently providing real estate brokerage services be permitted to continue these services under a grandfather provision.

The Board continues to have concerns with conflicts and the appearance of conflicts between real estate brokerage CUSOs and the credit unions such CUSOs serve. However, because the existing real estate brokerage CUSOs do not appear to present a safety and soundness risk, the Board is willing to provide a grandfather exemption for existing real estate brokerage CUSOs. This interim final rule amends § 712.6(b) so that CUSOs engaged in real estate brokerage services prior to April 1, 1998 may continue to provide that service.

Section 712.5 allows the Board to limit or discontinue a CUSO service if it has supervisory, legal, or safety and soundness concerns. The Board cautions that if a conflict between the real estate brokerage CUSO and the FCU's loan program arises, the Board may order the FCU to divest its investment in the real estate brokerage CUSO.

The Board believes good cause exists to issue this provision as an interim final rule. The rule is relieving a regulatory burden and CUSOs engaging in this activity must either know that they are going to be allowed to continue or begin the process of closing down the business.

Amendment

Section 712.6 is revised to allow FCUs to invest in or loan to CUSOs engaged in real estate brokerage services provided the CUSO was engaging in that activity prior to April 1, 1998.

Request for Comment

The Board is requesting comment on the change made by this interim final rule providing a grandfather exemption for real estate brokerage CUSOs in existence prior to April 1, 1998. The Board is also requesting comment on whether real estate brokerage services