(ii) The proposal raises no significant policy or supervisory issues.

* * * * *

2. Section 265.11(d)(11) is revised to read as follows:

§ 265.11 Functions delegated to Federal Reserve Banks.

* * * * *

(d) * * *

(11) *Investments in Edge and agreement Corporation subsidiaries.* To approve an application by a member bank to invest more than 10 percent of capital and surplus in Edge and agreement corporation subsidiaries, provided that:

(i) The member bank's total investment, including the retained earnings of the Edge and agreement corporation subsidiaries, does not exceed 20 percent of the bank's capital and surplus or would not exceed that level as a result of the proposal; and

(ii) The proposal raises no significant policy or supervisory issues.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, November 16, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–29177 Filed 11–21–01; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 722 and 742

Regulatory Flexibility Program

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board is issuing a final rule that will permit credit unions with advanced levels of net worth and consistently strong supervisory examination ratings to be exempt, in whole or in part, from certain NCUA regulations. The NCUA Board is also issuing a final amendment to the appraisal regulation to increase the dollar threshold from $100,000 to $250,000 for when an appraisal is required. This final rule and final amendment will reduce regulatory burden.

DATES: The rule is effective March 1, 2002.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6540; or Lynn K. Markgraf, Program Officer, Office of Examination and Insurance, 1775 Duke Street, Alexandria, Virginia, or telephone (703) 518–6360.

SUPPLEMENTARY INFORMATION: On March 16, 2000, the NCUA Board issued an advance notice of proposed rulemaking (ANPR) on a regulatory flexibility and exemption (RegFlex) program with a sixty-day comment period. 65 FR 15275 (March 22, 2000). The Board received seventy-four comments on the RegFlex concept. After reviewing the issues addressed by the commenters, the Board issued a Notice of Proposed Rulemaking (NPR) on March 8, 2001. 66 FR 15055 (March 15, 2001). Although the Board actually received over 1400 letters or e-mail messages, NCUA staff credited multiple comment letters from the same credit union as one comment, for a total of 1304 comments on the proposed rule. Comments were received from 551 federal credit unions, 267 state-chartered credit unions, 438 credit union volunteers or members, 33 leagues, six national credit union trade associations, four realtors and associations, one bank trade association, one appraisal association, one insurance company, one law firm, and one construction company.

In general, 1297 commenters supported the proposed regulation and many commenters supported the proposal as written. Many supporters encourage the NCUA Board to provide further regulatory flexibility in the future. A number of commenters recommended some changes to the proposed rule. Many commenters commended the Board for its bold initiative and most of them believe this regulatory approach will reduce regulatory burden and provide greater flexibility for those credit unions that have demonstrated a track record of safe and sound operations.

Seventy-nine commenters believe that RegFlex credit unions will have a competitive advantage and fifty-eight of these commenters believe that well-managed credit unions deserve this advantage. Thirty-six commenters stated that RegFlex credit unions would not have a competitive advantage.

Regarding risk to the National Credit Union Share Insurance Fund (NCUSIF), 184 commenters stated that the adoption of this proposal will not significantly increase risk. Most of these commenters believe no increase in risk will occur because healthy credit unions have the ability to manage any increased safety and soundness concerns. Two commenters believe the proposal will increase risk. Many commenters believe the regulation will encourage credit unions to become stronger financial institutions.

Discussion

RegFlex Criteria

The first criterion for eligibility under this proposal, is that credit unions must have received a composite CAMEL code 1 or code 2 for two consecutive exams. The second criterion is that a credit union must have a net worth ratio of nine percent or greater, and be well-capitalized under NCUA's prompt corrective action regulations. 12 CFR Part 702. The NCUA Board believed the proposed criteria were generally sound and did not propose that a CAMEL 1 or 2 in management needs to be part of the criteria. One hundred and five commenters specifically supported the eligibility requirements as proposed. Twenty-two commenters specifically agreed with the NCUA Board that there should not be a separate management component for RegFlex eligibility. A few commenters stated that a credit union should have a 1 or 2 in management to be eligible for RegFlex.

A few commenters suggested different eligibility requirements to obtain the benefits of RegFlex. One of these commenters requested the Board not only look at the net worth and CAMEL ratings of credit unions, but also look to how well they are serving their members and whether those members are satisfied. Almost all of the other commenters' suggestions retained some of the Board's proposal of either a CAMEL component or net worth ratios. While the Board agrees that service to members and member satisfaction are important issues for credit unions, these are not generally considered to be safety and soundness issues, and would not be easily measured criteria for purposes of RegFlex. The Board continues to believe that CAMEL ratings and net worth ratios are the best measures of how well a credit union is managed and how much risk it presents to the NCUSIF and the credit union system. That is, consistent with safety and soundness concerns, credit unions with advanced levels of net worth and consistently strong supervisory examination ratings have earned exemptions from certain NCUA Regulations.

CAMEL Rating

Thirty-two commenters stated that CAMEL ratings should not be used to determine eligibility because they can be used unfairly by examiners to keep credit unions out of the program. Many of these commenters believe that the CAMEL rating is arbitrary and

subjective to the individual examiner. Three commenters suggested a different time period for maintaining the CAMEL component. Thirteen commenters suggested using call report data and financial statements instead of a CAMEL rating. As discussed above, the Board is retaining the requirement that a credit union must have received a composite CAMEL code 1 or code 2 for two consecutive exams. The Board understands the commenters' concerns that a credit union may be unfairly kept out of the program. However, the application process should help alleviate some of these concerns because a credit union that lacks the required CAMEL rating can still apply to be part of the program if it has sufficient net worth. In addition, if credit union management believes its CAMEL rating is being manipulated, it should ask the regional director to review the issue.

Net Worth Requirement

Regarding the net worth requirement, 485 commenters believe the nine percent net worth requirement should be decreased. Four hundred and fifty-six of these commenters stated the net worth requirement should be seven percent and sixteen of these commenters stated that the net worth requirement should be eight percent. The remaining commenters offered varying numbers. As discussed above, the Board is retaining the requirement that a credit union must have a net worth ratio of nine percent or greater, and be well-capitalized under NCUA's prompt corrective action regulations. The ability to build capital, which is demonstrated by the cushion of 200 basis points, represents a significant decrease in risk to both the credit union and the NCUSIF. Some of the reasons for this 200 basis point cushion are to minimize the risk of engaging in the expanded authority permitted by the RegFlex program as well as to minimize PCA implications. The Board continues to believe that the 200 basis point margin provides a sufficient margin of safety for RegFlex credit unions to withstand unexpected events and normal business fluctuations.

Net Worth Requirement for Complex Credit Unions

The NCUA Board proposed a different net worth requirement for complex credit unions: Nine percent or 200 basis points over their risk based net worth (RBNW) requirements, whichever is greater. This net worth requirement is beyond the ''well-capitalized'' threshold established by prompt corrective action (PCA). The NCUA Board stated that a significant margin of safety for complex credit unions is afforded by net worth ratios exceeding general requirements, especially when combined with stable, high CAMEL ratings.

Thirty-two commenters approved of the higher standard for ''complex'' credit unions. Nineteen commenters stated that the trigger should be the same for all types of credit unions. Three commenters stated that a credit union that is 200 basis points over its net worth requirement for PCA should qualify for RegFlex, even if they do not have nine percent net worth. A few commenters suggested that the alternative measure for complex credit unions should be deleted. A few other commenters suggested different triggers for complex credit unions. One commenter stated that examiners should determine the net worth requirement for the purpose of RegFlex eligibility.

The Board continues to believe that a 200 basis point margin over the minimum level required of a non-complex credit union will provide a sufficient, but not excessive, safety cushion to keep credit unions from ''bouncing'' in and out of RegFlex eligibility. Credit unions that meet the definition of ''complex'' under PCA do so because of additional balance sheet risk. In order to provide the safety cushion and risk mitigation RegFlex contemplates, a higher net worth level is needed. Again, as with non-complex credit unions, a 200 basis point cushion over the minimum level for a complex credit union to be classified as well-capitalized is considered to be a sufficient safety cushion to keep these credit union from ''bouncing'' in and out of RegFlex eligibility.

The NCUA Board has made some minor modifications in the language in the final rule in §§ 742.1 and 742.2 to make it consistent with the language in NCUA's prompt corrective action regulations.

RegFlex Process

The NCUA Board proposed an automatic exemption for credit unions meeting the eligibility requirements. The Board noted that, as credit unions become eligible for RegFlex, NCUA will notify credit unions of their eligibility, generally, during the examination process. Four hundred and sixty-one commenters believe the exemption should be automatic for credit unions that qualify, just as the Board proposed. A few commenters believe approval should be automatic with a notification to NCUA by the credit union. A few commenters stated that the process should not be automatic and that the credit union should apply to NCUA for approval. The NCUA Board believes that an automatic exemption is consistent with the spirit of the RegFlex concept and will not require any application for these credit unions meeting the criteria. As credit unions become eligible for RegFlex, NCUA will notify credit unions of their eligibility, generally, during the examination process.

The NCUA Board also proposed an application process for credit unions that meet only one of the two stated criteria to allow more credit unions to have RegFlex authority while maintaining the safety and soundness considerations that are fundamental to the program. The NCUA Board proposed that if a credit union is a CAMEL 3 (or CAMEL 1 or 2 for less than two consecutive cycles) with a net worth in excess of nine percent or if the credit union is a CAMEL 1 or 2 with a net worth under nine percent (or if complex, its risk based net worth level is lower than nine percent or 200 basis points over their risk based net worth requirements), a credit union can apply to the regional director for a RegFlex designation.

Twenty-five commenters supported an application process for credit unions that meet only one of the two eligibility criteria. A few of these commenters would only allow credit unions that meet the CAMEL criteria to use the application process. These commenters believe that the CAMEL component is a better indicator of safety and soundness than the net worth criteria. Two commenters did not support the application process. A number of commenters that addressed this issue requested that the rule state the criteria the regional director will consider when making this determination.

The NCUA Board continues to believe that the RegFlex authority should be extended to as many credit unions as possible while maintaining the safety and soundness considerations that are fundamental to the program. Therefore, the NCUA Board is retaining in the final rule the application process described above. The regional director will review the application in relation to the criteria that was not met for RegFlex, that is, net worth level or safety and soundness issues that resulted in a lower CAMEL rating. In the case of a credit union not meeting the new worth level, the regional director will review past, present and projected future performance, from both a managerial and financial perspective, to determine RegFlex approval. For those credit unions that meet net worth levels but not CAMEL rating requirements, the regional director's review will focus on the magnitude and resolution of the

issues that resulted in the lower CAMEL rating.

The proposal stated that a regional director, in his or her sole discretion, for substantive and documented safety and soundness reasons, would be able to revoke the RegFlex authority in whole or in part at any time and without advance notice. In such cases, a credit union would be able to appeal the determination to NCUA's Supervisory Review Committee within 60 days of the regional director's determination. One hundred and seven commenters support the regional directors' ability to revoke a RegFlex designation. A few of these commenters suggested allowing a grace period for a credit union if it has minimal deviation from the eligibility requirements for one or more periods. If a credit union falls below the net worth eligibility requirements for a projected short period of time, the credit union should apply for a ''grace period'' and the regional director will make a determination on whether to revoke, in whole or in part, the RegFlex authority. The regional director will review the continued RegFlex eligibility in the same manner as stated above for the application process. Assessing the issues that cause the deviation will eliminate credit unions operating near the minimum net worth requirements from making multiple requests to continue RegFlex activities. If a credit union's CAMEL rating is lowered so that the credit union meets neither eligibility requirement, the regional director will revoke the RegFlex designation.

Sixty-four commenters do not approve of the regional director having sole discretion to revoke a RegFlex designation. A few commenters believe that a regional director should only have the authority to revoke a designation if a credit union no longer meets the RegFlex eligibility criteria. A few commenters suggested that only the central office should be able to revoke the RegFlex designation. The NCUA Board believes a regional director's authority to revoke the exemption is integral to success of the program. External events, as well as internal events, can produce a dramatic change in a credit union's financial condition in a matter of months. The regional director should have the discretion to act quickly in regard to RegFlex eligibility to maintain the financial health of a credit union when certain events or trends exist. The Board also believes that the regional director will be able to make a more informed and expedited decision than central office staff. Therefore, the final rule retains the ability of the regional director to revoke the RegFlex designation.

Most of the commenters, whether for or against the regional directors' discretion, support the proposed rule's requirement that the regional director first notify the credit union of the revocation and provide the credit union with appeal rights. The NCUA Board is retaining the appeal process outlined in the proposed rule. NCUA is in the process of revising IRPS 95–1 on the Supervisory Review Committee to include RegFlex issues as an appeal that the Committee is authorized to address.

Five commenters agreed with the NCUA Board that, if a credit union loses RegFlex eligibility, its past actions will be grandfathered. Therefore, the NCUA Board is retaining in the final rule the express statement that, if a credit union loses its RegFlex eligibility, its past actions are grandfathered and no divesture is required. However, this does not diminish NCUA's authority to require a credit union to divest its investments or assets for substantive safety and soundness reasons.

(1) Section 701.36—FCU Ownership of Fixed Assets

The NCUA Board proposed including sections of the fixed asset rule, including the five percent limitation, in the RegFlex rule. In the proposal, the NCUA Board encouraged, but did not require, that a RegFlex credit union incorporate into its business plan the fixed asset limit it plans to establish. Four hundred and fifty-one commenters supported the Board's inclusion of the fixed asset rule in RegFlex. Many of these commenters stated a credit union's board of directors should set the fixed asset limit. Fifteen commenters stated that all credit unions should be exempt from the fixed asset rule. Three commenters did not believe the fixed asset rule should be part of RegFlex. A few commenters requested that RegFlex credit unions be exempt from all provisions of the fixed asset rule. The NCUA Board believes the 5% limitation on fixed assets should be eliminated for credit unions that qualify for RegFlex. However, the NCUA Board encourages the board of directors of each RegFlex credit union to establish a fixed asset limitation and incorporate that limit into its written business plan.

While the NCUA Board noted that an exemption from some of the restrictions on purchasing a building and leasing a portion of the property would also be lifted under RegFlex, it stated this would not authorize a credit union to engage in long-term commercial leasing. For safety and soundness and legal reasons, the NCUA Board stated that a credit union still must comply with § 701.36(d) of the fixed asset rule and have a plan to use the property for its own operation. Seven commenters specifically endorsed federal credit unions complying with § 701.36(d). Thirty-five commenters would exempt RegFlex credit unions from this section. However, for legal and safety and soundness reasons, the Board believes that RegFlex credit unions should abide by this provision and have a plan to use the property for its own operation because federal credit unions do not generally have the authority to engage in commercial leasing. One commenter stated that NCUA should expand § 701.36(d) from a three-year to a five-year period for partial utilization of real property for RegFlex credit unions. The agency is evaluating this suggestion and may consider such an expansion when the fixed asset rule is next reviewed and revised.

The NCUA Board stated in the preamble to the proposed rule that RegFlex credit unions should also comply with the conflict of interest provision in § 701.36(e) of the rule. The Board stated that this conflict of interest provision is sound, consistent with the Federal Credit Union Bylaws, and already offers more flexibility than other conflict of interest provisions in NCUA's regulations. Only two commenters addressed this issue and approved of RegFlex credit unions continuing to follow the conflict of interest section of the fixed asset rule. The NCUA Board is retaining in the final rule that RegFlex credit unions comply with the conflict of interest provision in the fixed asset rule.

Finally, the NCUA Board requested comment on whether the fixed asset rule, itself, should be structured differently so that there would be a tiered limit on fixed assets. A few commenters requested more flexibility on the limit in the fixed asset rule. Seventeen commenters supported a tiered structure based on a percentage of net worth. Two commenters opposed a tiered structure. A few commenters provided different methods for calculating a fixed asset limit. The NCUA Board is committed to revising the fixed asset rule and will consider the use of some type of a tiered structure, such as the one used by the Office of Thrift Supervision, when the rule is revised.

(2) Part 703—Investment and Deposit Activities

The NCUA Board proposed lifting certain investment requirements for RegFlex eligible credit unions. Three hundred and one commenters supported including the proposed sections of the investment rule in

RegFlex. Eight of these supporters stated that NCUA needed to reduce investment requirements further for those credit unions with acceptable capital ratio levels. A few commenters believe other provisions of the investment regulation should be considered, but they did not make specific recommendations. One commenter believes that the investment changes should apply to all credit unions.

In response to these comments, the NCUA Board directed the Office of Investment Services and the Office of Examination and Insurance to review part 703 to determine if regulatory relief can be provided to all credit unions in the context of amending part 703. As a result of this review, the NCUA Board issued an Advanced Notice of Proposed Rulemaking (ANPR) in October of this year, requesting comment from credit unions on expanding selected sections of part 703.

One commenter believes RegFlex credit unions should be able to make any investments that banks may. Federal credit unions do not have the same statutory investment authority as banks so the Board cannot adopt this suggestion. *See* 12 U.S.C. 1757(15). One commenter would not include the investment regulation in RegFlex because the commenter perceived an increase in risk. Three commenters stated they did not approve of expanding investment powers. The NCUA Board recognizes these concerns but believes institutions meeting the RegFlex criteria can manage the additional risk.

Section 703.90(c) requires quarterly stress testing (300 basis point shock) of individual complex securities if the total sum of complex securities, as defined by the investment regulation, exceeds net capital. For those credit unions that measure the impact of interest rate changes on their entire balance sheet as part of their asset liability management programs, the NCUA Board proposed waiving this regulatory requirement for RegFlex credit unions. The NCUA Board also stated that RegFlex credit unions should continue to measure, at least quarterly, the impact of a sustained, parallel shift in interest rates of plus and minus 300 basis points on their entire balance sheet as part of their asset liability management monitoring. Fifty-nine commenters would waive the 300 point basis point shock test for RegFlex credit unions. Twelve commenters opposed waiving the quarterly stress testing for RegFlex credit unions. The NCUA Board has decided to include this investment provision in the final regulation because it does not pose a significant adverse effect for RegFlex credit unions. This exemption does not eliminate stress testing, rather it reduces duplicative reporting burden for those institutions that have a risk management process that measures the impact of interest rate changes on the entire balance sheet.

Section 703.40(c)(6) limits the discretionary delegation of investments to third parties to 100% of net capital. NCUA proposed waiving the 100% limitation and permitting RegFlex credit unions to set their own limit in a policy adopted by their boards of directors. Eighty-seven commenters believe it is appropriate for NCUA to waive or modify the 100% limitation on discretionary delegation of investments and allow the credit union to set a limit via board policy. Five commenters did not support waiving the 100% limitation on discretionary delegation of investments for RegFlex eligible credit unions. The NCUA Board has decided to include this investment provision in the final regulation because it offers expanded investment portfolio management options for RegFlex institutions and it would not have a significant adverse impact on safety and soundness.

Section 703.110(d) limits zero coupon investments to under ten years from settlement date. The NCUA Board proposed removing this limitation for RegFlex credit unions. Twelve commenters specifically supported the exemption; seven commenters specifically did not. The NCUA Board has decided to include this investment provision in the final regulation because it would not have a significant adverse impact on safety and soundness and would increase potential yield when part of a managed ALM.

The NCUA Board had previously decided not to include § 703.110, which prohibits stripped, mortgage-backed securities, residual interests in CMOs/REMICS, mortgage servicing tights, commercial mortgage-related securities, or small business related securities. Nevertheless, a number of commenters discussed this section. Thirty-two commenters stated NCUA should permit RegFlex credit unions to make these type of investments. Thirteen commenters believe stripped mortgage-backed securities and residual interests in CMOs/REMICs are not viable investments for credit unions. Twelve commenters stated these are high risk investments and suggested that perhaps a percentage of total investment could be allowed if credit unions measure risk adequately. Because of the risk associated with these types of investments, the NCUA Board has decided not to incorporate it into the final regulation. However, as discussed earlier, comments on these investment activities are requested in the ANPR on part 703.

Five commenters requested investments in commercial paper for RegFlex credit unions. One commenter would permit natural person credit unions the same investment powers as corporate credit unions. One commenter believes NCUA should allow credit unions to purchase principal-only stripped mortgage-based securities to hedge interest rate risk as the value of the security moves positively to a rate increase. Section 120(a) of the Federal Credit Union Act authorizes the NCUA Board to provide expanded investment authority for corporate credit unions by regulation. This statutory flexibility does not exist for natural person credit unions. The ANPR on part 703 requested comments on authorizing principal-only strips as a vehicle to hedge interest rate risk.

(3) Section 701.25—Charitable Donations

The current rule limits recipients of charitable donations to organizations located in or conducting activities in a community in which the federal credit union has a place of business. Furthermore, the board of directors must approve charitable contributions, and the approval must be based on a determination by the board of directors that the contributions are in the best interests of the federal credit union and are reasonable given the size and financial condition of the federal credit union. The NCUA Board asked whether credit unions meeting the RegFlex criteria should be completely exempt from the requirements of this regulation. Eighty-three commenters stated that the entire charitable donations regulation should be part of RegFlex. One hundred and forty-four commenters believe the charitable donations regulation should be eliminated for all federal credit unions. Three commenters would not include charitable donations as part of RegFlex.

The NCUA Board is convinced that credit unions qualifying for RegFlex have proven their track record of sound management and should be exempt from the charitable donations regulation. However, the Board is not convinced that this exemption should apply to all credit unions. The donation of a credit union's members' money to an outside party is a highly sensitive issue. The Board believes the requirements in the current regulation are critical for nonqualifying credit unions to ensure that the interests of the credit union's members are protected

and that conflicts of interest are avoided.

(4) Sections 701.32(b) and (c)—Payment on Shares by Public Unit and Nonmembers

The current regulation limits the maximum amount of all public unit and nonmember shares to 20% of total shares of a federal credit union or $1.5 million, whichever is greater. The NCUA Board proposed that these provisions be part of the RegFlex rule. Two hundred and six commenters supported including the proposed provisions on public unit and nonmember accounts in the final rule. Seven commenters would not include these provisions as part of RegFlex. Eight commenters stated that low-income credit unions should be exempt from the limits on nonmember shares. One commenter stated that RegFlex credit unions should be exempt from all of the provisions of § 701.32. Twenty-one commenters stated this exemption should apply to all credit unions.

A number of commenters stated this regulation is unnecessary because of PCA. While PCA may serve to discourage excessively rapid asset growth in a credit union, it does not mitigate the additional risks that may be presented by nonmember shares. These accounts frequently are attracted by offering higher than normal dividend rates and are characteristically more volatile than core member shares. This additional volatility can pose asset-liability management concerns and liquidity concerns. The NCUA Board has not been provided any convincing rational for exempting all federal credit unions from these provisions and has incorporated it in the final rule.

Two commenters stated this provision should also apply to state-chartered credit unions due to the language in § 741.204. The NCUA Board agrees with this comment. If a state-chartered credit union meets the RegFlex criteria, then the credit union need not comply with § 701.32(b) and (c). A state-chartered credit union that only meets one of the two criteria may also avail itself of the application process.

(5) Section 701.23—Purchase, Sale and Pledge of Eligible Obligations

The NCUA Board requested comment on whether to permit credit unions that meet the RegFlex criteria to purchase any auto loan, credit card loan, member business loan, student loan, or mortgage loan from any other credit union as long as they are loans the purchasing credit union is empowered to grant. The only limitation to this authority is the statutory limitation regarding the purchase of eligible obligations from liquidating credit unions. One hundred and sixty-three commenters supported expanding the authority for the purchase and sale of eligible obligations. Some of the commenters believe this provision would help the safety and soundness of the credit union system. Seven commenters suggested this section apply to all federal credit unions.

One commenter stated that, due to the NCUSIF nexus in § 741.8, state-chartered credit unions must also be granted this additional authority. The NCUA Board is cognizant that it failed to state clearly that RegFlex credit unions may purchase eligible obligations from federally insured credit unions. The final rule has been amended to make this distinction clear. Section 741.8 does not preempt a state's rule that grants the same authority as this RegFlex provision.

One commenter recommended that credit unions be able to purchase member loans from other financial institutions and business entities but was not able to provide a compelling legal basis for this extension of authority. One commenter objected to the inclusion of this section and stated that allowing federal credit unions to hold these loans in their portfolio is contrary to NCUA's historical position. The authority for this provision is in section 107(14) of the Federal Credit Union Act. The legal analysis for including this provision in RegFlex was addressed in the preamble to the proposed rule and need not be repeated here. 66 FR 15055, 15059 (March 15, 2001). The NCUA Board believes this authority expands the liquidity options for credit unions and enhances the safety and soundness of the credit union system. Therefore, the NCUA Board is incorporating this authority into the final regulation, with the only limitation being the statutory limitation regarding the purchase of eligible obligation from liquidating credit unions.

Comments on Other Regulations

The NCUA Board requested comment on whether any other regulation should be part of the RegFlex program. Numerous comments were received on various regulations, most of which the Board previously stated would not be part of RegFlex or are statutorily required.

Mortgage Lending—Section 701.21(f) and (g)

One hundred and seventy commenters recommended easing regulatory limits or ''examiner guidelines'' limiting mortgage lending for RegFlex credit unions. These commenters mistakenly believe there are examiner guidelines or a regulatory limit on how many mortgages a credit union may make. Five commenters asked that mortgage lending be liberalized, but did not specify how this should be accomplished. The agency will continue to review its mortgage lending regulation to determine if it can reduce regulatory burden. One hundred and one commenters requested that RegFlex credit unions be exempt from loan maturity limits. One commenter suggested that RegFlex credit unions have 30 years to finance the purchase of vacation or rental properties. One commenter believes RegFlex credit unions should have a 30-year maturity on home improvement and home equity loans. Most of NCUA's loan maturity limits are statutory but the agency will continue to review § 701.21(f) to determine if there is a need to expand the 20-year maturity limit for those specified types of loans.

Leasing—Part 714

In the proposal, the NCUA Board stated that the leasing regulation is not currently a good candidate for RegFlex because of safety and soundness concerns. In any case, seventy-four commenters recommended including the leasing regulation as part of RegFlex, but did not specify whether it should include the whole regulation or simply certain provisions. Six commenters requested an exemption from the 25% residual interest requirement imposed by § 714.4. Five commenters would not include leasing in RegFlex. One commenter requested that NCUA exempt all credit unions from the leasing regulation. The NCUA Board is not persuaded that the leasing regulation should be part of RegFlex. The NCUA Board has safety and soundness concerns regarding leasing and has not been provided any convincing rationale on why the leasing regulation is unduly burdensome.

Incidental Powers—Part 721

The NCUA Board stated that it did not believe the new incidental powers activities regulation should be part of RegFlex. Six commenters stated that RegFlex credit unions should have greater latitude with their incidental powers. One commenter stated that incidental powers should not be part of RegFlex. The NCUA Board issued a final rule on incidental powers in July that expands a credit union's incidental powers activities and is applicable to all federal credit unions.

Interest Rate Ceiling—Section 701.21(c)(7)

One commenter requested that the NCUA Board increase the interest rate ceiling for RegFlex credit unions. NCUA is statutorily required to review its interest rate ceiling every 18 months if the ceiling is above 15%. The NCUA Board does not believe RegFlex credit unions should have a higher interest rate ceiling than the current 18%.

CUSO Regulation—Part 712

One commenter recommended that NCUA should exempt RegFlex credit unions from unspecified provisions of the CUSO regulation. The NCUA Board is not including the regulation in RegFlex because it was updated in July of this year and it received no specific recommendation. The Board wishes to note that the 1% investment and lending limits are statutory. *See* 12 U.S.C. 1757(5)(D) and (7)(I).

Member Business Loans—Part 723

One commenter recommended that NCUA exclude the member business loan regulation from RegFlex. Thirty-four commenters requested exemptions from member business loan requirements that are not statutory in nature. Seven other commenters requested more flexibility in member business loans. Seventy commenters stated RegFlex credit unions should be exempt from the loan-to-value requirements in the member business loan regulation. One commenter requested an exemption from the staff experience requirement in the member business loan regulation. Four commenters would lift the statutory cap on member business loans for RegFlex credit unions. Two commenters requested that RegFlex credit unions have the ability to offer unsecured business loans that are not credit cards or lines of credit up to a present limit of $50,000. One commenter requested the amount of the aggregate loan limit on business loans to one individual or group should be increased to 25% of net worth for RegFlex credit unions. The NCUA Board does not believe the member business loan regulation is a good candidate for RegFlex because of statutory requirements and safety and soundness concerns. *See* 12 U.S.C. 1757a. However, as a part of the agency's ongoing regulatory review process, the entire member business regulation is scheduled for review in 2003. The NCUA Board will continue with its efforts to reduce, where appropriate, regulatory burden.

Fidelity Bond Coverage—Part 713

Four commenters stated RegFlex credit unions should be exempt from unidentified provisions of part 713 on fidelity bond coverage. The NCUA Board believes this regulation is minimally burdensome for credit unions and, due to safety and soundness concerns, will not be part of RegFlex.

Field of Membership Issues

In the proposal, the NCUA Board stated that field of membership issues should not be part of RegFlex. Nevertheless, numerous commenters addressed this issue. Sixteen commenters did not believe field of membership issues should be part of RegFlex. One commenter stated field of membership issues should be part of RegFlex.

One hundred and forty-eight commenters supported freezing the asset base for purposes of calculating the operating fee as an incentive for expanding into the low-income area. Four commenters disagreed with this provision being part of RegFlex. One hundred and twenty commenters supported the use of incentives to encourage credit unions to expand into low-income or underserved communities. Four commenters did not approve of any incentives for credit unions to add underserved areas.

Last year, the NCUA Board issued final amendments to NCUA's Chartering Manual that addressed the addition of underserved areas. Although the NCUA Board deferred any action regarding incentives, it did streamline the application process. As a result, over one hundred and twenty-seven federal credit unions have added underserved areas this year. It appears that no incentives are warranted since credit unions are rapidly expanding into underserved areas. The Board will continue to monitor this issue and, if the increase in service to underserved areas begins to diminish significantly, it will review the issue again.

Examination Issues

Although the NCUA Board did not request comment on changes to NCUA's supervision and examination program for credit unions meeting the RegFlex criteria, many commenters addressed this issue. Five hundred and one commenters stated that a different exam cycle or more favorable examination treatment should be offered to RegFlex credit unions. Many of these commenters requested a streamlined examination process for RegFlex credit unions. Most of these commenters suggested an 18 to 24 month cycle. Many of these commenters also stated that outside auditors should perform audits in lieu of on-site examinations to save time and avoid duplication. Three commenters stated that RegFlex credit unions should not have more favorable treatment than other credit unions. The NCUA Board recently adopted a risk-based examination scheduling policy, that will result in many credit unions being examined twice over a three-year period. The agency's intent is to move toward a more risk-focused examination approach to place greater reliance on outside audits. This approach, however, will not relieve NCUA of its responsibility to evaluate safety and soundness. The role of an audit is to evaluate the adequacy of internal controls and to attest to the fairness of financial statement presentation, but not to evaluate risk to the NCUSIF. The NCUA Board will continue to review the examination process to determine if it can be further streamlined and improved.

Four commenters suggested that NCUA should revise peer comparisons for RegFlex credit unions. Four other commenters stated that NCUA should eliminate peer comparisons for RegFlex credit unions. Two commenters were not in favor of eliminating peer comparisons and do not believe that delinquency and charge-off ratios should be less important to examiners. NCUA provides peer comparisons primarily for use by credit union management. Generally, the agency finds that credit unions appreciate receiving this information and, in fact, some have requested that NCUA provide a more detailed presentation of the data. The peer information is used by NCUA examiners as a frame of reference, rather than a determination of a CAMEL rating. Two commenters requested more flexibility on delinquency and charge-offs for RegFlex credit unions. One commenter perceives a tendency for examiners to recommend that credit unions develop written policy statements to replace current documented operating procedures. Since these comments primarily relate to examination issues affecting all credit unions, they will be addressed separately from this rule. NCUA is currently reviewing these issues and may incorporate some of these ideas in the revised examiners guide.

Prompt Corrective Action—Part 702

One hundred and fifty-three commenters believe NCUA should grant RegFlex credit unions more favorable treatment under PCA. The basic net worth criteria contained in the PCA were established by Congress, and

NCUA does not have the ability to change them. More importantly, to be eligible for RegFlex, a credit union's net worth must exceed, by 200 basis points, the minimum level for it to be well capitalized under PCA. By virtue of being well capitalized, the credit union is not affected by PCA, and there is no more favorable treatment that could be offered under PCA.

State Charters

Twenty-two commenters stated that NCUA should expand the rules to make RegFlex applicable to state-chartered credit unions. The NCUA Board recognizes and is committed to the dual chartering system. Likewise, as the regulator of federal credit unions, the NCUA Board is committed to reducing regulatory burden, where appropriate, on federal credit unions. On those occasions when a regulation applies to state-chartered credit the NCUA Board will expand RegFlex to them.

Section 722.3(a)(1)—Proposed Amendment to the Appraisal Regulation

NCUA's current appraisal regulation is more restrictive than the regulations of other financial institution regulators. Because experience has demonstrated that most credit unions are able to manage a higher degree of risk in making loans without an appraisal, the NCUA Board proposed an amendment to § 722.3(a)(2) to increase the threshold for an appraisal from $100,000 to $250,000. The NCUA Board also proposed to increase the threshold for an appraisal for a member business loan to $250,000 if it involves real estate. The increase would be consistent with the regulatory provisions of the agencies regulating banks and thrifts. Two hundred and eighty-two commenters fully supported the proposed dollar threshold for an appraisal. Twenty commenters objected to increasing the appraisal threshold. One commenter opposed increasing the threshold for business lending because this commenter believes this type of lending is riskier. One commenter suggested that NCUA modernize appraisal requirements for agricultural lending.

The NCUA Board has not been persuaded that the increase in the appraisal threshold would significantly increase safety and soundness concerns so the proposed amendment is adopted in the final rule. Credit unions must still make reasonable determinations of value to ensure compliance with loan-to-value requirements. Section 722.3(d) of the appraisal rule requires that a real estate related transaction under the dollar threshold be supported by a written estimate of market value performed by an independent, qualified, and experienced individual. In addition, § 722.3(e) allows NCUA to require an appraisal whenever necessary to address safety and soundness concerns. These two sections of the appraisal rule mitigate any potential safety and soundness concerns raised by increasing the dollar threshold.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any 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 final rule reduces regulatory burden. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

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 determined that this is not a major rule.

Paperwork Reduction Act

The application requirements in part 742 have been submitted to the Office of Management and Budget. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB Number. The control number will be displayed in the table at 12 CFR part 795.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory 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. One section of this final rule will lift a regulatory requirement for some federally-insured state-chartered credit unions. However, this final rule will not have a substantial direct effect 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 the rule does not constitute a policy that has federalism implications for purposes of the executive order.

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

The NCUA has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 26821 (1998).

List of Subjects

12 CFR Part 722

Credit unions, Mortgages, Reporting and recordkeeping requirements.

12 CFR Part 742

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 15, 2001.

Becky Baker,

Secretary of the Board.

For the reasons stated in the preamble, 12 CFR chapter VII is amended as follows:

PART 722—APPRAISALS

1. The authority citation for part 722 continues to read as follows:

Authority: 12 U.S.C 1766, 1789 and 3339.

§ 722.3 [Amended]

2. Section 722.3(a)((1) is amended by replacing the number ''100,000'' with ''250,000'' and removing the words ''except if it is a business loan and then the transaction value is $50,000 or less.''

3. Add part 742 to read as follows:

PART 742—REGULATORY FLEXIBILITY PROGRAM

Sec.

Authority: 12 U.S.C 1756 and 1766.

§ 742.1 What is NCUA's Regulatory Flexibility Program?

NCUA's Regulatory Flexibility Program (RegFlex) exempts credit unions with a current net worth of nine percent (or if a credit union is subject to a risk-based net worth requirement under § 702.103 of this chapter, it must be 200 basis points over its risked based net worth level or nine percent, whichever is higher) and a CAMEL rating of 1 or 2, for two consecutive examinations, from all or part of identified NCUA regulations. The Regulatory Flexibility Program also grants eligible credit unions additional powers.

§ 742.2 How do I become eligible for the Regulatory Flexibility Program?

Eligibility is automatic as soon as the credit union meets the net worth and CAMEL criteria. If a credit union is a CAMEL 3 (or CAMEL 1 or 2 for less than two consecutive cycles) with a net worth in excess of 9 percent or if the credit union is a CAMEL 1 or 2 with a net worth under 9 percent (or if a credit union is subject to a risk-based net worth requirement under § 702.103 of this chapter, and it does not exceed 200 basis points over its risk based net worth level), it can apply to the regional director for a RegFlex designation, in whole or in part.

§ 742.3 Will NCUA notify me when I am eligible for the Regulatory Flexibility Program?

Yes. Once this rule is effective, NCUA will notify all RegFlex eligible credit unions. Subsequent notifications of eligibility will occur after an application for a RegFlex designation or as part of the examination process.

§ 742.4 From what NCUA Regulations will I be exempt?

RegFlex credit unions are exempt from the provisions of the following NCUA Regulations: § 701.25, § 701.32(b) and (c), § 701.36(a), (b) and (c), § 703.40(c)(6), § 703.90(c), and § 703.110(d) of this chapter.

§ 742.5 What additional authority will I be granted?

Notwithstanding the general limitations in § 701.23 of this chapter, RegFlex credit unions are eligible to purchase any auto loan, credit card loan, member business loan, student loan or mortgage loan from any federally insured credit union as long as the loans are loans that the purchasing credit union is empowered to grant. RegFlex credit unions are authorized to keep these loans in their portfolio. If a RegFlex credit union is purchasing the eligible obligations of a liquidating credit union, the loans purchased cannot exceed 5% of the unimpaired capital and surplus of the purchasing credit union.

§ 742.6 How can I lose my RegFlex eligibility?

Eligibility may be lost in two ways. First, the credit union no longer meets the RegFlex criteria set forth in § 742.1. When this event occurs, the credit union must cease using the additional authority granted by this rule. Second, the regional director for substantive and documented safety and soundness reasons may revoke a credit union's RegFlex authority in whole or in part. The regional director must give a credit union written notice stating the reasons for this action. The revocation is effective as soon as the regional director's determination has been received by the credit union.

§ 742.7 What is the appeal process?

A credit union has 60 days from the date of the regional director's determination to revoke a credit union's RegFlex authority (in whole or in part) to appeal the action to NCUA's Supervisory Review Committee. The regional director's determination will remain in effect unless the Supervisory Review Committee issues a different determination. If the credit union is dissatisfied with the decision of the Supervisory Review Committee, the credit union has 60 days from the issuance of this decision to appeal to the NCUA Board.

§ 742.8 If I lose my RegFlex authority, will my past actions be grandfathered?

Any action by the credit union under the RegFlex authority will be grandfathered. Any actions subsequent to losing the RegFlex authority must meet NCUA's regulatory requirements. This does not diminish NCUA's authority to require a credit union to divest its investments or assets for substantive safety and soundness reasons.

[FR Doc. 01–29152 Filed 11–21–01; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–48–AD; Amendment 39–12508; AD 2001–19–51]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA341G, SA342J, and SA–360C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2001–19–51, which was sent previously to all known U.S. owners and operators of Eurocopter France (ECF) Model SA341G, SA342J, and SA–360C helicopters by individual letters. This AD requires, before further flight, replacing a certain unairworthy main rotor head torsion tie bar (tie bar) with an airworthy tie bar. This AD also requires revising the limitations section of the maintenance manual by adding a life limit for certain tie bars. This AD is prompted by an accident involving an ECF Model SA341G helicopter due to the failure of a tie bar. The actions specified by this AD are intended to prevent failure of a tie bar, loss of a main rotor blade, and subsequent loss of control of the helicopter.

DATES: Effective December 10, 2001, to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–19–51, issued on September 21, 2001, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before January 22, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–48–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On September 21, 2001, the FAA issued