Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 712 and 741

RIN 3133–AD20

Credit Union Service Organizations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA proposes to change its credit union service organization (CUSO) rule by adding two new categories of permissible CUSO activities: Credit card loan origination and payroll processing services. The proposal would also add new examples of permissible CUSO activities within existing categories and would expand the scope of two categories of services to include persons eligible for credit union membership. The proposal would impose new regulatory limits on the ability of credit unions to recapitalize their CUSOs in certain circumstances. While the CUSO rule generally only applies to federal credit unions (FCUs), the proposal would revise and extend 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. The proposal would also clarify that CUSOs may buy and sell participations in loans they are authorized to originate under the current rule. Finally, NCUA proposes to delete as unnecessary the section in the current rule concerning amendment requests. These amendments will clarify the rule while enhancing CUSO operations and addressing safety and soundness concerns.

DATES: Comments must be received on or before June 30, 2008.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Proposed Rule 712, CUSO Amendments'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

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. These proposed changes are, 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 proposed changes are intended to update and clarify the regulation.

B. Proposed Changes

Expanding the Scope of Certain Services To Include Persons Within the Field of Membership

In October 2006, Congress enacted the Financial Services Regulatory Relief Act of 2006 (Reg Relief Act), which amended section107(12) of the FCU Act to permit FCUs to provide certain financial services to persons within their fields of membership. The Reg Relief Act also amended the FCU Act to extend the general lending maturity limit for FCUs from 12 years to 15 years. Public Law 109–351, sections 502–503, 120 Stat. 1966 (2006). On October 19, 2006, the NCUA Board issued an interim final rule to implement these provisions. 71 FR 62875 (October 27, 2006). The Board made the interim rule permanent effective March 26, 2007. 72 FR 7927 (February 22, 2007).

Legislative history of the Reg Relief Act indicates that Congress intended to allow FCUs ''to sell negotiable checks, money orders, and other similar transfer instruments, including international and domestic electronic fund transfers, to anyone eligible for membership, regardless of their membership status.'' S. Rpt. 109–256, p. 5; H. Rpt. 109–356 Part 1, p. 63. The Board believes the enactment of that law warrants a parallel expansion in the CUSO rule, since an FCU may elect to provide some or all of these types of services through the vehicle of a CUSO.

The current CUSO rule provides that CUSOs must ''primarily'' serve credit unions or their members. 12 CFR 712.3(b). The rule is founded on language in the FCU Act permitting FCUs to lend to service organizations established primarily to serve the needs of credit unions and whose business relates to the daily operation of credit unions. 12 U.S.C. 1757(5)(D). A similar constraint is contained in the investment authority: CUSOs must provide services ''associated with the routine operations of credit unions.'' 12 U.S.C. 1757(7)(I). Insofar as the Reg Relief Act has expanded the scope of FCU operations by authorizing certain money transfer services to be provided to persons eligible for membership, the Board believes it prudent to make a similar adjustment to the ''primarily serves'' governor applicable to CUSOs. Services covered in the Reg Relief Act correspond to the checking and

currency services and the electronic transaction services categories in the CUSO rule. Accordingly, the Board proposes to amend 712.3(b) to specify that FCUs may lend to or invest in CUSOs providing services under these two categories so long as the CUSO primarily provides them to persons within the FCU's field of membership, or to persons eligible for membership in credit unions with which the CUSO has contracts.

Credit Card Loan Origination

The Board is proposing to permit CUSOs to originate and hold credit card loans as a principal on its own behalf or on behalf of credit unions. As far as lending, the current CUSO rule permits CUSOs to engage in consumer mortgage lending, business lending and student lending. Generally, NCUA has permitted CUSOs to engage in loan origination where a degree of expertise is required to be successful, such as business, student and real estate lending, and that expertise may not be attainable by many individual credit unions. *See, e.g.*, 63 FR 10743, 10752 (March 5, 1998). NCUA believes credit card origination also requires a degree of specialization and expertise to succeed and the proposal will permit credit unions to collaborate and pool resources and expertise through the vehicle of a CUSO. Accordingly, the Board believes credit card origination should be an approved CUSO activity.

Credit unions administering their own credit card programs encounter substantial risks and burdens. Thin margins and competitive pricing characterize the credit card business at the prime end of the market and a small number of banks with nationwide operations dominate the business. Permitting FCUs to use a CUSO to manage their card programs will help credit unions to manage that risk.

CUSOs are already engaged in providing various types of card processing and related services. The expansion is also consistent with an underlying principle of the CUSO rule, which is to foster and support the development of expertise in a particular line of business to a degree that is often unattainable at the individual credit union level. The amendment would combine the scale, expertise, and back office operational support required to be successful in the credit card business.

Many credit unions have found it difficult to manage their credit card business successfully and have elected to sell that business to other financial institutions. In many cases, credit unions that have sold their business to another institution but retained an affinity association with the cards find that service levels and consumer support are not as good as the credit union had expected. In addition, in some cases the financial institution cross-markets other products and services to the cardholders and sometimes succeeds in drawing other business away from the credit union. Even if the acquiring institution allows a credit union to remain associated with the card, its earnings on the card business will be significantly reduced. The Board believes this amendment will provide an alternative for credit unions interested in selling their credit card business.

The CUSO rule, implementing a statutory limitation, prohibits a CUSO from acquiring control, directly or indirectly, of a depository financial institution so an FCU seeking to establish a CUSO for credit card origination cannot fund its operation by receiving deposits. 12 U.S.C. 1757(7)(I); 12 CFR 712.6. In addition, the Board notes that NCUA's loan participation rule would not support the sale to FCUs of participation interests in a credit card portfolio, which consists of open-end, revolving credit.

Applicability of Select CUSO Rule Provisions to Federally Insured Credit Unions

Currently, the CUSO rule only applies to FCUs but the Board is proposing to have two particular provisions addressing safety and soundness considerations apply to federally insured, state chartered credit unions (FISCUs), namely, the provision requiring a CUSO's agreement to permit NCUA to have access to its books and records and the provision requiring investing FCUs to take steps to ensure the CUSO maintains corporate separateness. 12 CFR 712.3(d)(3), 712.4. While NCUA has the authority under the FCU Act to impose regulatory requirements on FISCUs, 12 U.S.C. 1781–1790d, it works cooperatively with state supervisory authorities in exercising this authority and generally only regulates where there are safety and soundness concerns.

The Board proposes to amend subpart B of part 741 of its rules to add a new section specifying that FISCUs must adhere to the requirements in § 712.3(d)(3) and § 712.4. The proposed amendment would specify that 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. This provision follows the approach taken by NCUA in defining a CUSO for FCU investment and loan purposes. As discussed above, based on changes made by the Reg Relief Act, the Board is proposing to expand the CUSO definition to include, in the case of check cashing and money transfer services, entities that primarily serve individuals eligible for credit union membership. The Board proposes to incorporate this concept into this section of the rule as well by specifying that CUSOs that provide these types of services fall within the scope of the rule if the services are provided primarily to credit unions or individuals who are eligible for membership in credit unions having a loan, investment or contract with the CUSO.

Some state laws may authorize FISCUs to lend to or invest in entities that are not primarily engaged in serving credit unions, credit union members, or persons eligible for membership, and the rule would not apply in these cases. The Board anticipates that entities that are not primarily engaged in serving credit unions or their members will not present the types of safety and soundness and systemic risks about which it is most concerned. Comment is solicited on possible other approaches to describing the scope of the rule. In addition, the Board proposes to revise the last sentence in § 712.1, which currently states that Part 712 has no applicability to FISCUs or their subsidiaries that do not have FCU investments or loans.

FISCUs are exposed to significant potential safety and soundness and reputation risks based on their relationship with their CUSOs. Although NCUA has the right to examine books and records belonging to a FISCU, it does not enjoy a similar right concerning access to the books and records of the CUSO. Without that access, NCUA cannot thoroughly and accurately evaluate CUSO risks to FISCUs and, ultimately, the risk to the National Credit Union Share Insurance Fund. The Board notes, in this respect, that not all states impose the same type of relatively strict investment limits in the FCU Act, which limit FCU investment in all CUSOs to one percent of unimpaired capital and surplus. 12 U.S.C. 1757(7)(I). Similarly, not all states limit the types of activities in which a CUSO may engage. Further, without some assurance that the FISCU is insulated from claims that might be asserted against its CUSO, there is risk that the FISCU could lose more than the value of its investment in its CUSO.

NCUA experience with several FISCUs that own CUSOs presenting significant exposure to potential loss supports this amendment. There are

CUSOs, for example, that have used extensive leveraging from non-credit union sources to fund commercial loans. In turn, credit unions often buy participations in these loans, sometimes without having conducted an adequate due diligence themselves. Other CUSOs are engaging in loan origination despite being thinly capitalized, presenting risk to the credit union that losses or affirmative liability sustained by the CUSO will pass to them. If the CUSO should become bankrupt or insolvent, losses to those credit unions holding participation interests in loans the CUSO originated and serviced could also result. In other cases, CUSOs may be used by the credit union to develop an undue concentration of loans in a particular business segment or geographic area. This presents reputation risk to the credit union, especially if significant defaults arise and foreclosures become necessary. CUSOs may also engage directly in lines of business that present risks, such as a trust business or mortgage or commercial loan origination.

The Board understands and acknowledges that the degree of risk to a FISCU depends on several factors, including the nature of the services its CUSO provides and the relative extent of the CUSO's involvement in the credit union's overall business. For example, the Board is substantially more concerned about a CUSO that originates mortgage and business loans than one that provides backroom management or operational support. CUSOs engaging in widespread sale of participation interests and providing loan servicing on behalf of a significant number of credit unions present potential systemic risks that the Board believes warrant direct monitoring. NCUA solicits the views of commenters about ways to isolate and address this type of risk without unduly burdening the industry or unnecessarily covering all CUSO relationships. For example, it may make sense to identify types of business or degrees of market penetration as conditions for applicability of the rule.

The Board is aware a FISCU may be required to maintain an investment in an entity to receive services at optimal terms and rates, but in which the credit union's share of the overall business of that entity is relatively minor. In such cases, the credit union may not have enough influence or involvement with the entity to be able to require its consent to access to books and records by NCUA. The Board solicits input from the public about ways to address this circumstance, such as by creating a minimum investment threshold for applicability of the rule.

Finally, the Board is aware some states may already have rules or requirements governing corporate separateness between FISCUs and their CUSOs. The Board solicits input from the public about whether the rule ought to include a provision, similar to that which exists in NCUA's member business lending rule, by which states could demonstrate that compliance with an existing state rule adequately addresses the liability concerns present in this context. Also, the proposed amendment states expressly that it does not preempt any applicable state law or regulation that currently authorizes a state credit union regulatory authority (SSA) to review a CUSO's books and records or to conduct an examination of the CUSO.

Reciprocity. As the discussion above documents, the right of access to books and records of CUSOs is an important tool in assuring safety and soundness. The Board understands, however, that not every SSA enjoys a right of access to books and records of CUSOs in which FISCUs chartered by that state have an investment or other relationship. There may also be cases in which a FISCU has only a contractual relationship with a CUSO but does not have either a loan to or an investment in the CUSO, which may be owned exclusively by one or more FCUs.

To address this circumstance, the Board proposes to change § 712.3(d)(3) to require the credit union's agreement with the CUSO to permit access not only to NCUA but also to any SSA having supervisory responsibility over any FISCU that has a loan, an investment, or a contractual agreement for products or services with the CUSO. This will assure that an SSA with responsibility for a credit union has the opportunity to review and evaluate the risk to which its institutions may be exposed. Even though NCUA enjoys a cooperative relationship with all SSAs 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 SSA. 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 SSAs to CUSO books and records.

Transition Period for Compliance. The Board acknowledges that it will take some time for FISCUs to develop and enter agreements with their CUSOs and to obtain legal opinions addressing corporate separateness issues. The Board also recognizes that FCUs with loans to or investments in CUSOs will be required under this proposal to make changes in the agreements they currently have with their CUSOs. The Board proposes to establish a compliance date for each of these changes that is not earlier than six months following the date of publication of the final rule in the **Federal Register**. Accordingly, the proposed rule changes reflect this compliance date.

Recapitalization of Insolvent CUSOs

Under certain circumstances, an FCU may consider re-capitalizing a CUSO that has become insolvent because it determines the investment is prudent, even though some portion of the amount invested in the recapitalization effort may have no book value for the FCU.

The Board believes the risks inherent in this situation warrant an amendment to the CUSO rule that would apply in cases in which an FCU is already less than adequately capitalized or where the recapitalization of the CUSO would render the FCU less than adequately capitalized under NCUA's prompt corrective action (PCA) rules. 12 CFR Part 702. In either case, an FCU contemplating such an investment would be required to obtain approval in advance from the appropriate NCUA regional director if 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.

This amendment would minimize the likelihood, which is possible under the current rule, that an FCU may be investing, on an aggregate basis, more than one percent of its capital in a CUSO. The amendment would also prevent an FCU from continuing to invest in an entity that has become a lost cause. NCUA has had specific experience with credit unions that have elected to invest additional funds with CUSOs that have experienced losses. That decision calls for business judgment and is, in most cases, within the discretion of the board of directors. Where, however, the proposed investment would change the credit union's PCA rating to less than adequate, or where the credit union is already in a less than adequately capitalized condition, the Board believes prior notice to and approval from NCUA is appropriate.

Amendment Requests

The current rule has a section outlining a process by which the NCUA Board can consider approval for a CUSO activity not currently preapproved. 12

CFR 712.7. This section provides that NCUA will consider a request to be a petition to amend the rule and indicates the agency will solicit public comment or otherwise act on the request within sixty days. This provision, which dates to 1986, was brought over intact from the prior version of the rule when NCUA conducted a wholesale review and revision of the rule in 1998. 63 FR 10743, 10754 (March 5, 1998). Although NCUA staff receive numerous inquiries about whether a particular CUSO activity is already within one of the preapproved categories, NCUA has received only one formal request to amend the rule, which the Board rejected. In addition, since the 1998 amendment of the CUSO rule, NCUA adopted a change to its rule and policy on promulgation of regulations to include a general provision on the procedures by which members of the public may petition the NCUA Board for the issuance, amendment or repeal of any rule. 12 CFR 791.8(c); Interpretive Ruling and Policy Statement 87–2 as amended by Interpretive Ruling and Policy Statement 03–2. Accordingly, the Board believes the amendment provisions described in § 712.7 of the CUSO rule are redundant and should be deleted.

Payroll Processing

The Board proposes to amend the CUSO rule to authorize CUSOs to provide payroll processing services directly to credit union members. NCUA's Office of General Counsel has concluded that an FCU may provide its members with payroll processing services as an exercise of its incidental powers and that a CUSO may assist the FCU in its provision of that service. OGC Op. 05–1204 (February 15, 2006). Until now, however, NCUA has not permitted a CUSO to provide this service directly to members, based in part on the agency's longstanding view that clerical and managerial services authorized for CUSOs may only be performed on behalf of the FCU. Some public comments filed in response to the annual regulatory review proposed that NCUA authorize CUSOs to provide this service directly to members.

As with the credit card discussion above, the Board believes this is a logical extension of the CUSO rule. Some CUSOs currently provide support to credit unions offering payroll services to their members by providing data processing support, which is already a preapproved CUSO activity. Payroll services are essentially the electronic movement of money through accounts. It is a very common ancillary service for business members and a key part of the business services package of services. Allowing CUSOs to offer this service directly to credit union members would be a better and much simpler model to implement and is a natural extension of the current pre-approved services.

Additional Examples of Permissible Activities Within Approved Categories

The CUSO rule sets out broad categories of permissible CUSO activities that are related to the routine daily operation of credit unions. 12 U.S.C. 1757(I); 12 CFR 712.5. Most of the broad categories have examples of specific activities that are permissible within the category. The specific activities are provided as illustrations of activities permissible under the particular category, and are not intended as an exclusive or exhaustive list. 12 CFR 712.5.

From time to time, NCUA receives requests from FCUs and other interested parties to review and evaluate whether a particular activity falls within one or more of the approved categories. These determinations are usually made in legal opinion letters issued by NCUA's Office of General Counsel directly in response to the request. Although the opinion letters are posted on the agency website and are available for public review, the Board believes it is appropriate to amend the CUSO rule to include these examples in the rule, so that the agency's position has maximum exposure.

In the recent past, NCUA has determined that a CUSO may provide for all aspects of a real estate settlement for mortgage loans the credit union grants to its members. Examples of permissible services include: arranging the title search; reviewing the title work; providing title insurance as an agent for the underwriter; and handling the settlement of the mortgage loan. The Office of General Counsel concluded these activities, although not specifically listed in the rule, fall within the preapproved categories of insurance brokerage services and loan support services and relate to the routine daily operations of credit unions. Accordingly, the Board proposes to amend the rule to include real estate settlement services as an example under each of these preapproved categories.

NCUA's Office of General Counsel has also recently concluded the following activities are permissible examples of services that CUSOs may provide under one or more preapproved categories:

➢ Employee leasing services and support, permissible under professional and management services, § 712.5(b);

➢ Purchase and servicing of non-performing loans, permissible under loan support services, § 712.5(j);

➢ Business counseling and related services for credit union business members, permissible under professional and management services and financial counseling services, § 712.5(b), (f);

➢ Referral and processing of loan applications for members turned down by the credit union, permissible under loan support services, § 712.5(j).

Accordingly, the Board proposes to amend the rule to include each of these services as representative examples of permissible services under the noted preapproved category.

Loan Participations

Part 712 specifically authorizes CUSOs to engage in consumer mortgage loan origination, member business loan origination, and student loan origination. 12 CFR 712.5(c), (d), (n). CUSOs are also recognized in NCUA's loan participations rule as a ''credit union organization'' authorized to engage in the purchase and sale of loan participations. 12 CFR 701.22(a)(4). The CUSO rule does not, however, specify that a CUSO may engage in the purchase or sale of participation interests in loans they are authorized to make. The Board is aware CUSOs are currently engaged in this practice and believes it is permissible. The Board proposes to conform the CUSO rule with the loan participation rule by clarifying the authority to originate a loan includes the authority to buy or sell a participation interest in that type of loan. As noted above, however, the NCUA's loan participation rule would not support the sale to FCUs of participation interests in a credit card portfolio, which consists of open-end, revolving credit.

Request for Comments

Although the Board is not proposing additional, specific regulatory changes to the CUSO rule at this time, the Board solicits comment on the issue of consolidated opinion audits for CUSOs that are majority owned by a single FCU. The CUSO rule currently requires an FCU to obtain a written commitment from any CUSO in which it has made an investment or to which it has made a loan that the CUSO will secure an annual opinion audit of its financial statements, performed in accordance with generally accepted auditing standards by a licensed, certified public accountant. 12 CFR 712.3(d)(2). In 2005, the Board amended this rule to allow an FCU owning 100% of a CUSO to comply with the audit requirement by

conducting a consolidated audit in which the CUSO's financial data is included in the consolidated statement of financial condition. 70 FR 55227 (September 21, 2005). At that time, the Board considered and rejected the idea of permitting consolidated audits where the CUSO is majority owned, rather than wholly owned, by an FCU. Several commenters urged the Board to reconsider this approach, citing in support of their view the fact that consolidated audits for majority owned subsidiaries are permissible under generally accepted accounting principles. The Board's determination was based principally on concern for potential minority investors in a CUSO that is majority owned by one FCU, who might not be able to review a separate opinion audit before making an investment. The Board solicits comment from the public on whether to revise this rule to permit a majority owner to obtain only a consolidated audit and, if so, how the interests of minority investors can be protected.

The Board believes these proposed changes are consistent with its ongoing efforts to reduce regulatory burden while assuring that credit unions operate in a safe and sound manner. The Board welcomes comment on all aspects of the proposal.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities. NCUA considers credit unions having less than ten million 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 this proposed rule, if adopted, 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

NCUA recognizes that the proposal to require FISCUs to comply with certain provisions of the CUSO rule constitutes an information collection within the meaning of the Paperwork Reduction Act (PRA). 44 U.S.C. 3507(d). The aspects of the proposed amendments that raise PRA issues include the requirement that a FISCU obtain a written agreement with its CUSO providing NCUA and the relevant SSA with access to the CUSO's books and records and the requirement that it take steps to assure that it maintains a corporate identity separate from its CUSO.

NCUA estimates it will take an average of two hours for a credit union to implement an agreement with its CUSO regarding access to information, and an additional two hours to obtain a written legal opinion. All FISCUs with an investment in or loan to a CUSO will need to comply with these requirements as an initial matter; however, thereafter, the rule's impact will only be on those FISCUs that enter into a new arrangement with a CUSO. According to NCUA records, of the 3,065 FISCUs that filed a form 5300 call report with NCUA as of December 31, 2007, 1,044 reported at least one interest in a CUSO. These FISCUs reported a total CUSO count of 2,219. At year-end 2006, there were 3,173 FISCUs, of which 1,050 reported at least one interest in a CUSO. These FISCUs reported a total CUSO count of 2,183. For year-end 2005, there were 3,302 FISCUs, of which 1,017 reported at least one CUSO investment. These FISCUs reported a total CUSO count of 2,035. The three-year average suggests that, despite declining numbers of credit unions (due mainly to merger and consolidation activity), FISCUs make approximately 92 new investments in CUSOs each year. Using these estimates, information collection obligations imposed by the rule, on an annual basis, are analyzed below:

Initial Compliance by All FISCUs

a. Written agreement relating to access to information.

Total FISCU investment interests reported in CUSOs, 12/31/2007: 2,219.

Frequency of response: One-time.

Initial hour burden: 2.

2 hours × 2,219 = 4,438.

b. Written legal opinion.

Number of respondents: 2,219.

Frequency of response: One-time.

Initial hour burden: 2.

2 hours × 2,219 = 4,438.

Annual Compliance Obligations

a. Written agreement relating to corporate separateness and access to information.

Average number of new FISCU investment interests reported in CUSOs: 92.

Frequency of response: annually.

Annual hour burden: 2.

2 hours × 92 = 184.

b. Written legal opinion.

Number of respondents, i.e., requiring new or updated opinion per year: 92.

Frequency of response: annually.

Annual hour burden: 2.

2 hours × 92 = 184.

Two other aspects of the proposal raise PRA issues. FCUs with an investment in or loan to a CUSO will need to revise the current agreement they have with their CUSO to provide for access to books and records by any SSA, if the CUSO also has a loan or investment from a FISCU or provides any contractual services to a FISCU. According to NCUA records, of the 5,036 FCUs that filed a form 5300 call report with NCUA as of December 31, 2007, 1,112 reported at least one interest in a CUSO; a total of 2,190 CUSO interests was reported. For purposes of this analysis, NCUA estimates that this requirement will affect one-half of all CUSOs owned by FCUs. Using these estimates, information collection obligations imposed by this aspect of the rule, on an annual basis, are analyzed below:

Changing the Written Agreement Relating to Access to Information

One-half of total FCU investment interests reported in CUSOs, 12/31/2007: 1,095.

Frequency of response: One-time.

Initial hour burden: 1.

1 hour × 1,095 = 1,095.

The third aspect of the proposed changes that involves PRA consideration is the requirement pertaining to recapitalizing CUSOs that have become insolvent. The proposed rule would require certain credit unions to seek and obtain prior approval from NCUA before making an investment to recapitalize an insolvent CUSO. According to NCUA's records, as of December 31, 2007, there were only 36 FCUs that were less than adequately capitalized (i.e., net worth of under 6%). According to year-end 2007 call report data, none of these FCUs currently has any interest in any CUSOs. As of December 31, 2007, there were no FCUs at or near the less than adequately capitalized threshold reporting an investment in an insolvent CUSO.

NCUA estimates it would take an FCU approximately two hours to complete a request for NCUA's prior approval for an investment to recapitalize an insolvent CUSO.

Obtaining NCUA Prior Approval

Total FCUs less than adequately Capitalized, 12/31/2007: 36.

Frequency of response: One-time.

Initial hour burden: 2.

2 hours × 36 = 72.

In accordance with the requirements of the PRA, NCUA intends to obtain a modification of its current OMB Control Number, 3133–0149, to support these proposed changes. Simultaneous with its publication of this proposed amendment to Part 712, NCUA is submitting a copy of the proposed rule to the Office of Management and Budget (OMB) along with an application for a modification of the OMB Control Number.

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

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

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The bulk of this proposed rule, if adopted, will apply only to federally-chartered credit unions. The proposal also calls for the application of certain aspects of the CUSO rule to 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 any event, the proposed 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).

Agency Regulatory Goal

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

List of Subjects in 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 April 17, 2008.

Mary F. Rupp,

Secretary of the Board.

Accordingly, NCUA proposes to amend 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 rule 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 deleting the period at the end of the sentence and adding the phrase ''; *provided, however*, that with respect to services provided under paragraph (a) and (g) of § 712.5, 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 [INSERT DATE THAT IS 180 DAYS FOLLOWING PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

5. Amend § 712.5 as follows:

a. Add a new paragraph (b)(11);

b. Amend paragraph (c) by deleting 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;''

c. Amend paragraph (d) by deleting 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;''

d. Redesignate paragraphs (e) through (r) as paragraphs (g) through (t), respectively, and add new paragraphs (e) and (f).

e. Under the newly redesignated paragraphs (h), (j) and (l) add new paragraphs (h)(7), (j)(4), and (l)(4) through (l)(6);

f. Amend the newly redesignated paragraph (p) by deleting 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;''

The revisions read as follows:

§ 712.5 What activities and services are preapproved for CUSOs?

* * * * *

(b) * * *

(11) Employee leasing services

* * * * *

(e) Credit card loan origination;

(f) Payroll processing services;

* * * * *

(h) * * *

(7) Business counseling and consultant services;

* * * * *

(j) * * *

(4) Real estate settlement services;

* * * * *

(l) * * *

(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 turned down by the credit union;

§ 712.7 [Removed and Reserved]

6. Remove and reserve § 712.7.

PART 741—REQUIREMENTS FOR INSURANCE

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

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

2. 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 [INSERT DATE THAT IS 180 DAYS FOLLOWING PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

[FR Doc. E8–9457 Filed 4–30–08; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0492; Directorate Identifier 2008–CE–023–AD]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Corporation Model 390 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Hawker Beechcraft Corporation (HBC) Model 390 airplanes. This proposed AD would require you to remove the current preformed packing, elbow fitting, and jam nut from the left and right hydraulic pump pressure output port and replace with new parts. This proposed AD would also require you to install a hydraulic pump case drain check valve. This proposed AD results from nine occurrences of hydraulic fluid leaking from the engine hydraulic pump output fitting as a result of an improperly installed elbow connecting the output port to the pulse dampener hose. We are proposing this AD to prevent hydraulic fluid leaks from the left and right hydraulic fluid pump and to prevent the flow of hydraulic fluid into the engine compartment. The loss of hydraulic fluid can result in loss of airplane hydraulic system pressure and the consequent loss of hydraulic system functions including gear extension/retraction, spoiler functions, and anti-skid braking system actuation. The inability of the hydraulic installation to isolate flow of hydraulic fluid could result in a hazardous amount of flammable fluid in the corresponding engine compartment. These conditions, if not corrected, could result in loss of system functions and/or fire in the engine compartment.

DATES: We must receive comments on this proposed AD by June 30, 2008.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67201; telephone: (316) 676–5034; fax: (316) 676–6614.

FOR FURTHER INFORMATION CONTACT: Anthony Flores, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4174; fax: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2008–0492; Directorate Identifier 2008–CE–023–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of