



NATIONAL CREDIT UNION ADMINISTRATION  
Washington, D.C. 20456

April 13, 1987

GC/HMU:sg  
3300

Office of General Counsel

Stephen A. J. Eisenberg, Esq.  
General Counsel  
Pentagon Federal Credit Union  
Box 1432  
Alexandria, VA 22313-2032

Dear Mr. Eisenberg:

This is in response to your letter of February 6, 1987, concerning a Federal credit union's ("FCU") sale of its excess data processing capacity and lease or sale of associated software and Section 701.26 of the NCUA Rules and Regulations (12 C.F.R. §701.26).

When Section 701.26 of the Regulations was revised in 1982, it was the intention of the NCUA Board to consolidate three regulations (previous Sections 701.26, 701.27-1 and 701.28) and to set the parameters for credit unions entering into agreements involving fixed assets or activities and/or services which relate to the daily operations of credit unions. (See preamble to final rule, 47 Fed. Reg. 30460, 7/14/82, enclosed.) One of the prior sections of the Rules and Regulations contained a specific provision addressing the limited sale of an FCU's excess data processing capacity and the lease or sale of its software. (See prior Section 701.27-1(f), enclosed.)

Under prior Section 701.27-1(f), an FCU "utilizing data processing for the maintenance of its own accounting records may lease or sell its software . . . [and] sell data processing capacity in excess of its own immediate needs. . . ." The consolidated regulation (current Section 701.26) was not intended to limit this specific authority; hence, FCU's continue to have the limited authority to lease or sell their software and sell data processing capacity in excess of their immediate needs pursuant to Section 701.26. However, FCU's cannot be in the business of providing others with data processing capacity. Prior Section 701.27-1(f) required NCUA Regional Director approval for all such sales. Proposed Section 701.26 (see 46 Fed. Reg. 57693, 11/25/81, enclosed) required approval of the Regional Director for certain sales. These requirements were eliminated in the final version of Section 701.26 (see 47 Fed. Reg. 30461)

FOIA Vol II H miscellaneous services

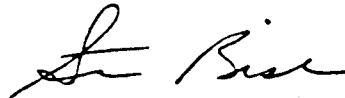
Stephen A. J. Eisenberg, Esq.

Page Two

As you discussed with Hattie Ulan of this Office, one further issue warrants mentioning. Courts have held that a national bank can not market data processing and computer services to the general public pursuant to its incidental powers provision. (See, e.g., National Retailer Corp. v. Valley Natl. Bank, 411 F. Supp. 308 (D. Ariz. 1976) aff'd, 604 F. 2d 32 (9th Cir. 1979).) We do not believe that the limited sale of data processing capacity in excess of an FCU's immediate needs violates the ruling in Valley National Bank. However, FCU's contemplating the sale of excess data processing capacity should be cognizant of the existing case law.

I hope that we have been of assistance.

Sincerely,



STEVEN R. BISKER  
Assistant General Counsel

HMU:sg

Enclosures

include, but not necessarily physical facilities, central-  
management, and accounting

Accounting Service" means the  
of bookkeeping, account-  
er records related to the  
and functions of a credit  
manual, mechanical or elec-  
ods, and the furnishing of  
information derived from  
s.

Individual Identity" means that  
of each participating Fed-  
union is easily distinguish-  
other credit unions and or-  
participating in the service  
ities.

Centralized management"  
single authority responsible  
ing, controlling and direct-  
y-to-day operations of the  
er.

One or more Federal credit  
y contract with a vendor  
a Federal credit union to  
credit union service center.  
ct shall be in writing, shall  
approval of the Board, and  
sly provide for:

gating the credit union's  
records;

aining the credit union's  
identity;

ublishing minimum security  
procedures in accordance  
8 (12 CFR Part 748);

plying with the mandatory  
ts with regard to the adver-  
nsured status in accord-  
part 740 (12 CFR Part 740);

ping the services to be pro-  
e vendor and establishing  
f these services subject to  
iew and negotiation;

plying with the provisions  
concerning all services per-

mediate availability and pos-  
the Federal credit union's  
records for examination by  
and audit by the supervi-  
tee;

ublishing centralized man-  
consonance with the board  
of each credit union di-  
controlling the affairs of  
nion;

(ix) Notifying the credit union's  
surety company and obtaining written  
assurance from surety that coverage  
extends to the service center and its  
employees;

(x) Appointing the service center  
and its employees as agents of the  
credit union for purposes of transact-  
ing contracted services; and

(xi) Terminating, assigning, and me-  
diating the contract.

(2) The files of the Federal credit  
union shall contain specific informa-  
tion concerning the procedures to be  
used by the vendor in complying with  
the terms of the contract. Such infor-  
mation may be in the form of a stand-  
ard operating or users manual.

(3) A Federal credit union, in addi-  
tion to regular payments for services  
as provided under the contract, shall  
not pay in advance the actual or esti-  
mated charges for more than 3  
months' services. Where such advance  
payment is made it shall be amortized  
over a period not in excess of the  
period of the written agreement.

(c) (1) Requests for approval shall be  
submitted to the Regional Director in  
writing with a copy of the contract  
and all pertinent facts in support of  
the proposal not later than 60 days  
prior to the proposed implementation  
of the contract. A Federal credit union  
shall notify the Regional Director in  
writing within 30 days of the termina-  
tion of the contract.

(2) The Regional Director will investi-  
gate each request to participate in a  
credit union service center activity and  
will make a recommendation as to  
whether it should be approved or dis-  
approved. The request, contract and  
the recommendation of the Regional  
Director shall be forwarded to the  
Board, which shall approve or disap-  
prove the application. The Regional  
Director will be informed of the  
Board's action on the application and  
will promptly notify the Federal credit  
union concerned.

(3) Notwithstanding the provisions  
of paragraph (c)(2) of this section, the  
Regional Director may approve a Fed-  
eral credit union's request supported  
by a standard contract of the same  
service center which has received prior  
approval by the Board in accordance

with the provisions of paragraph (c)(2)  
of this section.

(d) No official or employee of a par-  
ticipating Federal credit union may  
have a pecuniary interest in the credit  
union service center pursuant to this  
section. No official of a participating  
Federal credit union may receive from  
the vendor of such services any salary  
or compensation other than the reim-  
bursement of necessary expenses in-  
curred in connection with the vendor's  
activities.

[39 FR 44423, Dec. 24, 1974]

§ 701.27-1 Purchase and sale of account-  
ing services.

(a) For the purposes of this section:

(1) "Accounting services" means the  
maintenance of bookkeeping, account-  
ing, or other records related to the  
purposes and functions of a credit  
union, by manual, mechanical, or elec-  
tronic methods, and the furnishing of  
reports and information derived from  
such records.

(b) A Federal credit union may pur-  
chase accounting services for the  
maintenance of all or a portion of its  
accounting records. Any purchase of  
accounting services shall be evidenced  
by a written agreement, the terms and  
conditions of which shall expressly in-  
clude a provision requiring compliance  
with § 701.14, and a provision requiring  
the vendor to make any accounting re-  
cords of the Federal credit union in  
his possession immediately available  
for examination by the Administra-  
tion.

(c) A Federal credit union purchas-  
ing accounting services shall notify  
the Regional Director in writing of the  
arrangement at least 30 days prior to  
the date on which such services shall  
commence. Such notice shall disclose  
the name and address of the vendor  
and information with respect to the  
records to be maintained and the  
method to be used. A Federal credit  
union shall notify the Regional Direc-  
tor in writing at least 30 days prior to  
the discontinuance of the arrange-  
ment.

(d) A Federal credit union, in addi-  
tion to regular payments for services  
as provided under the written agree-  
ment, shall not pay in advance the

actual or estimated charges for more than 3 months' services. Where such advance payment is made it shall be amortized over a period not in excess of the period of the written agreement.

(e) No official or employee of a Federal credit union shall be engaged directly in the management or operation of the accounting services purchased pursuant to this section, except where the vendor of such services is the sponsor of such credit union or is owned and operated by or controlled by one or more credit union leagues. However, in no event shall an official or employee of a Federal credit union receive from the vendor of such services any salary or compensation other than the reimbursement of necessary expenses incurred in connection with the vendor's activities, unless the vendor, who is also the sponsor of the credit union, regularly employs such official or employee.

(f) A Federal credit union utilizing data processing for the maintenance of its own accounting records may lease or sell its software. It may also sell data processing capacity in excess of its own immediate needs; however, total proceeds derived from the sale of such excess capacity shall, unless otherwise provided for by the Board, be limited to ten percent (10 percent) of its total operating income. All contracts for the sale or lease of software and sale of data processing capacity in excess of the immediate needs of the credit union shall be in writing and shall have the prior approval of the Regional Director. Request for such approval should be submitted to the Regional Director together with all pertinent facts in support of the proposal not later than sixty (60) days prior to the proposed effective date of contract.

[40 FR 32115, July 31, 1975]

§ 701.27-2 Credit Union Service Corporation.

(a) For purposes of this section:

(1) A "credit union service corporation," an organization described at section 107(7)(I) of the Federal Credit Union Act, and a "credit union organization," as described at section 107(5)(D) of the Federal Credit Union

Act, are identical entities. They are organizations incorporated under State law which are wholly-owned and controlled by credit unions. Designation as a "credit union service corporation" is contingent on Administration approval.

(2) A "Federal credit union" means a credit union chartered pursuant to Section 109 of the Federal Credit Union Act, its officers, directors, employees, agents or representatives.

(b) The purpose of a credit union service corporation is to provide only those goods and services and perform only those functions that are associated with routine credit union operations. It may provide any or all of the following to its stockholder credit unions:

- (1) Data processing services;
- (2) Promotion, marketing and general management support services;
- (3) Access to sophisticated accounting systems;
- (4) Non-profit debt counseling services;
- (5) Management training and education to credit union personnel;
- (6) Services related to processing, selling or servicing mortgage loans;
- (7) Credit card services;
- (8) Automated teller machine services; and
- (9) Other services, as determined by the Board, that are commonly associated with the routine operations of credit unions.

(c) A Federal credit union, group of Federal credit unions, or a group of Federal and State credit unions may agree to form a credit union service corporation and submit an application to the Board for approval to form such a corporation. The application shall include:

(1) The articles of incorporation and bylaws of the proposed credit union service corporation which explicitly state that the credit union service corporation shall:

(i) Provide services to each of its credit union stockholders and provide that each Federal credit union stockholder must purchase services within 6 months of its purchase of stock, and thereafter, in a manner which is normal for the service provided;

(ii) using cover (iii) ices t total stock year s ous fi (iv) prior invest (v) TH A CR TION UNIO INDIC CIAL TION TO C RAT: (v) Board and (vi) by th (2) any o eral c est ir tion pecur and unio pens: for n eratic ratio (3) by th (d) desig credit opera man: appro parat provi Act o tratic such const be re credit man: prop as de credit any

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 Part 701

#### Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union  
Administration (NCUA).

ACTION: Proposed rule.

**SUMMARY:** The purpose of this proposed rule is to replace §§ 701.26, 701.27-1, and 701.23 with one section which enhances the scope of contractual agreements which may be entered into by Federal credit unions. The rule is being proposed because of the belief that the existing sections, which it will replace, are confining to the extent that many Federal credit unions are unable to benefit from the increasing sophistication of facilities, equipment, and management expertise which is evolving in the financial marketplace. The ability to benefit from the more sophisticated facilities, equipment, and management expertise through contractual agreements will result in improved service to members and economies to all parties involved.

**DATE:** Comments must be received by January 22, 1982.

**ADDRESS:** Send comments to Robert S. Monheit, Regulatory Development Coordinator, Office of General Counsel, National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456.

**FOR FURTHER INFORMATION CONTACT:** Joseph W. Petrosky, Office of Examination and Insurance, Telephone: (202) 357-1065.

**SUPPLEMENTARY INFORMATION:** Prior to the promulgation of § 701.27-2 (Credit Union Service Corporation), §§ 701.28 (Credit Union Service Center), 701.27-1 (Purchase and Sale of Accounting Services), and 701.23 (Joint Operations and Activities) provided the only vehicles through which Federal credit unions could contract with vendors, or

agree with other credit unions, to share or utilize fixed assets and/or purchase or sell operational functions. These sections are designed to permit contractual agreements within well defined and specified areas of operation.

Section 701.26 empowers a Federal credit union to contract with a vendor other than a Federal credit union to provide a credit union service center, which is defined as providing services to include, but not necessarily limited to, physical facilities, centralized management, and accounting services. The regulation further sets forth several prerequisites to such a contract which are designed to ensure that each credit union's identity is preserved, internal control features are adequate, NCUA has access to records, and requirements contained in other regulations such as surety coverage, minimum security devices, and advertisement of insured status are met. Section 701.26 also requires the NCUA Board's approval of the initial contracts between a service center and a Federal credit union. This approval process has been delegated to the regional director. Finally, § 701.28 forbids an official or employee of a participating Federal credit union from having a pecuniary interest in the service center or from receiving any salary or compensation from the vendor, other than reimbursement of necessary expenses incurred in connection with the vendor's activities.

Section 701.27-1 empowers a Federal credit union to purchase accounting services for the maintenance of all or a portion of its accounting records. approval by the NCUA board is not required but notification to the regional director at least 30 days prior to the date on which the service is to commence is required. Paragraph (f) of this section empowers a Federal credit union, utilizing data processing for the maintenance of its own records, to lease or sell its software and to sell data processing capacity in excess of its own needs. Contracts for sale or lease of software and sale of excess data processing capacity require approval by the regional director and total proceeds derived from the sale of excess data processing capacity cannot exceed 10 percent of a Federal credit union's total operating income without approval of the NCUA Board.

Section 701.20 empowers a Federal credit union to agree with one or more other credit unions to share quarters and to carry on business operations either individually or jointly. Required components of the agreement are: segregation of each credit union's assets and records, maintaining each credit union's individual identity, equitable sharing of costs and centralized management controls over joint personnel and facilities which, nevertheless, permit each credit union to retain its responsibility for carrying on its own business. Agreements entered into under this section require approval of the NCUA Board.

While these sections were adequate and relevant to conditions existing for many years, the financial environment in which credit unions operate has undergone significant changes in recent years, reflecting rapidly advancing technology. Efforts by Federal credit union officials to access the improved technology, through contractual agreements, have been frustrated, on occasion, by the narrow confines of the existing regulations. This frustration has sometimes surfaced in the form of creative interpretations of the regulations which, though inspired at times, posed supervision problems and demonstrated the need for a regulatory review of existing regulations.

The following are examples of such situations:

(1) A Federal credit union's authority to enter into a contract for joint ownership of a building or other fixed assets is not delineated in any of the existing regulations;

(2) Some vendors are desirous of offering physical facilities and servicing member transactions, but not providing accounting services, while others are desirous of providing accounting services and servicing member transactions in the credit union's own physical facilities. Neither of these contractual agreements falls within the framework of existing regulations.

(3) Some Federal credit unions wish to utilize excess staff time by providing specialized services, such as loan counseling or loan collection, to other credit unions within the framework of a contractual agreement. The authority to enter into such contract is not clearly within the provisions of existing regulations. The authority of a Federal credit union to contract with another

are issued under sec. 1010, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.55a, paragraph (b)(1) is revised to read as follows:

**§ 50.55a Codes and standards.**

(b) (1) As used in this section, references to Section III of the ASME Boiler and Pressure Vessels Code refer to Section III, Division 1, and include editions through the 1980 Edition and addenda through the Summer 1981 Addenda.

Dated at Bethesda, Maryland this 17th day of June 1982.

For the Nuclear Regulatory Commission,  
William J. Dircks,

*Executive Director for Operations.*

[FR Doc. 82-18899 Filed 7-13-82; 8:45 am]

BILLING CODE 7590-01-M

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 217**

[Docket No. R-0411]

**Regulation Q; Interest on Deposits; Temporary Suspension of Early Withdrawal Penalty**

**AGENCY:** Federal Reserve System.

**ACTION:** Temporary suspension of the Regulation Q early withdrawal penalty.

**SUMMARY:** The Board of Governors, acting through its Secretary, pursuant to delegated authority, has suspended temporarily the Regulation Q penalty for the withdrawal of time deposits prior to maturity from member banks for depositors affected by severe storms and flooding in the Oklahoma counties of Blaine, Caddo, Custer, Kingfisher, Lincoln, Logan, Okfuskee, Payne and Washita.

**EFFECTIVE DATE:** June 18, 1982.

**FOR FURTHER INFORMATION CONTACT:** Daniel L. Rhoads, Attorney (202/452-3711) or Beverly A. Belcamino, Attorney (202/452-3823).

**SUPPLEMENTARY INFORMATION:** On June 18, 1982, pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141) and Executive Order 12148 of July 15, 1979, the President, acting through the Director of the Federal Emergency Management Agency, designated the Oklahoma counties of Blaine, Caddo, Custer, Kingfisher, Lincoln, Logan, Okfuskee, Payne, and Washita as major disaster areas. The Board regards the President's action as recognition by the major government that a disaster of major proportions had occurred. The President's designation enables victims

of the disaster to qualify for special emergency financial assistance. The Board believes it appropriate to provide an additional measure of assistance to victims by temporarily suspending the Regulation Q early withdrawal penalty (12 CFR 217.4(d)). The Board's action permits a member bank, wherever located, to pay a time deposit before maturity without imposing this penalty upon a showing that the depositor has suffered property or other financial loss in the disaster area as a result of the severe storms and flooding beginning on or about May 11, 1982. A member bank should obtain from a depositor seeking to withdraw a time deposit pursuant to this action a signed statement describing fully the disaster-related loss. This statement should be approved and certified by an officer of the bank. This action will be retroactive to June 18, 1982, and will remain in effect until 12 midnight, December 18, 1982.

**List of Subjects in 12 CFR Part 217**

Advertising; Banks, banking; Foreign banking.

In view of the urgent need to provide immediate assistance to relieve the financial hardship being suffered by persons in the designated counties of Oklahoma directly affected by the severe storms and flooding, good cause exists for dispensing with the notice and public participation provisions in section 553(b) of Title 5 of the United States Code with respect to this action. Because of the need to provide assistance as soon as possible and because the Board's action relieves a restriction, there is good cause to make this action effective immediately.

By order of the Board of Governors, acting through its Secretary, pursuant to delegated authority, July 8, 1982.

William W. Wiles,  
*Secretary of the Board.*

[FR Doc. 82-18899 Filed 7-13-82; 8:45 am]

BILLING CODE 6210-01-M

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 701**

**Federal Credit Unions; Contractual Agreements**

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

**ACTION:** Final rule.

**SUMMARY:** The purpose of this rule is to replace §§ 701.28, 701.27-1, and 701.28 with one section which enhances the scope of contractual agreements which may be entered into by Federal credit

unions. The rule is being promulgated because of the belief that the existing sections, which it will replace, are confining to the extent that many Federal credit unions are unable to benefit from the increasing sophistication of facilities, equipment, and management expertise which is evolving in the financial marketplace. The ability to benefit from the more sophisticated facilities, equipment, and management expertise through contractual agreements will result in improved service to members and economies to all parties involved.

**EFFECTIVE DATE:** July 7, 1982.

**ADDRESS:** National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 20456.

**FOR FURTHER INFORMATION CONTACT:** Joseph Visconti, Department of Supervision and Examination. Telephone (202) 357-1065.

**SUPPLEMENTARY INFORMATION:**

**Background**

On November 25, 1981, a proposed rule for consolidation of § 701.28—Credit Union Service Centers, § 701.27-1—Purchase and Sale of Accounting Services and § 701.28—Joint Operations and Activities into one rule was published in the Federal Register (46 FR 57883 1981) for public comment. The rule eliminated the redundant provisions of the three regulations and set the parameters for credit unions entering into agreements which relate to the daily operations of credit unions.

**Comments**

All commenters were supportive of the simplification effort. Two commenters recommended total elimination of the rules and the majority of commenters made suggestions to eliminate several of the requirements in the proposal.

One commenter observed that the definition of the term "operational functions" was so broad that it could be interpreted as including the exercise of all the express powers of Federal credit unions. Another commenter stated the term was self-explanatory and did not need an explicit definition. The NCUA Board agrees that the term could be subject to interpretation that is too broad and has eliminated the definition and the term itself in the final rule.

Three commenters stated that the definition of fixed assets by incorporation was unnecessary and confusing. Confusion is also caused by reference in § 701.36(c) to §§ 701.28, 701.27-1 and 701.28. It is agreed that it is not necessary to re-incorporate those

sections into the r  
is deleted. Section  
modified to delete

Four commenters  
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because most of t  
standard contract  
stated elsewhere  
regulations. The  
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that books and re  
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Two comment  
requirement for a

maintain in its files the specific  
information concerning the procedures  
to be used by parties for compliance  
with contractual agreements is not  
needed because that information would  
be in the credit union files under normal  
business practices. The NCUA Board  
concurs and that provision is deleted.  
Three commenters recommended  
removal of limitation of advance  
for organizations

of  
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NCUA Board will consider any  
compensation to officials that is tied to  
the amount of business activity  
generated by an agreement as a  
misappropriation of the credit union  
income or "corporate opportunity" and  
will deal with the situation accordingly.

Several commenters recommended  
deletion of the requirement for regional  
director approval to permit contractual  
agreements to exceed 10 percent  
of total income. One commenter  
recommended that it be left to the  
discretion of NCUA examiners to decide  
if income from contractual agreements is  
in the best interest of credit union safety and

Another commenter  
NCUA monitor the activity  
in this area. The  
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### Cost-Benefit Analysis

The significant  
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costs. Therefore,  
analysis is not

effective in  
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the modification is  
appropriate  
and does not change any  
of the provisions of the rule. Therefore,  
the modification is not

Part 701

ing requirements.  
y 7, 1982.

Secretary of the Board.

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

(Sec. 120, 73 Stat. 035 (12 U.S.C. 1788), sec.  
209, 84 Stat. 1104 (12 U.S.C. 1789))

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Accordingly, Title 12 of the Code of Federal Regulations is amended as set forth below:

1. Section 701.26 is revised to read as follows:

§ 701.26 Credit union service contracts.

(a) A Federal credit union may act as a representative of and enter into a contractual agreement with one or more credit unions or other organizations for the purpose of sharing, utilizing, renting, leasing, purchasing, selling, and/or joint ownership of fixed assets or engaging in activities and/or services which relate to the daily operations of credit unions. Agreements must be in writing, and shall advise all parties subject to the agreement that the goods and services provided shall be subject to examination by the NCUA Board to the extent permitted by law.

(b) Where any agreement calls for, or requires, the payment in advance of the actual or estimated charges for more than 3 months such payment shall be deemed an investment in a credit union service organization and subject to the limitations delineated in Sections 107(7)(I) and 107(5)(D) of the Federal Credit Union Act (12 U.S.C. 1757(7)(I) and 1757(5)(D)).

§§ 701.27-1 and 701.28 [Removed]

2. Sections 701.27-1 and 701.28 are removed.

3. Section 701.36(c)(1) is revised to read as follows:

§ 701.36 FCU ownership of fixed assets.

(c) Investment in Fixed Assets. (1) No Federal credit union with \$2,000,000 or more in assets, without the prior approval of the Administration, shall invest in fixed assets if the aggregate of all such investments exceeds 5 percent of assets.

[FR Doc. 82-19171 Filed 7-13-82; 8:45 am] BILLING CODE 7535-01-M

12 CFR Part 701

Credit Union Service Organizations

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: This final rule provides for considerable expansion in the list of permissible activities for a credit union service organization and permits them to be profit-making entities. This rule removes regulatory restrictions that limit the ability of Federal credit unions to compete effectively in today's

marketplace and will ultimately allow them to better serve their members.

EFFECTIVE DATE: July 7, 1982.

ADDRESS: National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Todd A. Okun, Assistant General Counsel, (202) 357-1030.

SUPPLEMENTARY INFORMATION: On March 4, 1982, the NCUA Board issued a proposed rule soliciting public comment on a proposal to deregulate 701.27-2 of the NCUA Rules and Regulations. The proposal would retitle 701.27-2 as "Credit Union Service Organizations" indicating that such entities would no longer be limited solely to the corporate form. In addition, the proposal would leave to the discretion of a Federal credit union's board of directors the identity of investment partners, the percentage of services to be sold to noninvesting credit unions and most other general business matters. It was proposed to permit these entities to be profit-making ventures and that the current approval procedures for this type of investment be significantly simplified. The proposal was based on a determination by the NCUA Board that the current rule may be having a stifling effect on the innovation and flexibility of credit unions in utilizing the service organization concept, especially in these difficult economic and budgetary times.

Summary of Comments

Of the 38 comment letters received, 36 were in support of the proposed regulation (although some proposed even more or complete deregulation). The two opposing comments indicated that such a deregulation would be to the detriment of smaller credit unions that could not afford to take advantage of expanded opportunities. It is the view of the NCUA Board, however, that these expanding opportunities will not obscure one of the original purposes of credit union service organizations: to permit small credit unions to join together to perform functions and engage in activities at a lesser cost than could be accomplished singly. Therefore, the Board does not believe that adoption of the proposed regulation, with appropriate modifications, will work to the detriment of smaller credit unions.

The NCUA Board has determined to adopt the proposed regulations with the changes outlined below.

1. The title of the regulation shall be changed to "Credit Union Service Organizations," as proposed, to reflect the fact that the corporate form is no longer mandatory. The regulation shall

be renumbered as Section 701.27. By separate Board action, the previous Section 701.27-1, Purchase and Sale of Accounting Services, has been deleted.

2. As proposed, a credit union service organization:

(a) Need not provide services to each of its investing credit unions nor must it limit its provision of services to noninvestors to any particular percentage of the previous fiscal year's cost of operation.

(b) Need not be a non-profit entity.

(c) Need not limit its fee charges to an amount sufficient only to cover the cost of the services provided.

(d) Need not be the recipient of investment funds from a credit union in order to receive a loan from that credit union, and

(e) Need not engage in the present cumbersome approval procedure.

Significant Issues

1. Purpose of Credit Union Service Organizations. The majority of comments suggested changes and significant expansion of subsection (b) of the proposed regulation which describes the purpose of a credit union service organization and sets out permissible activities. Several commenters noted that the proposed "purpose" clause speaks in terms of a credit union service organization providing "only" goods and services and performing "only" these functions associated with the routine credit union operations. This contrasts with both section 107(5)(D) of the Federal Credit Union Act concerning lending to credit union service organizations, which speaks in terms of such an organization being established "primarily" to meet the needs of its member credit unions, and with section 107(7)(I) of the Federal Credit Union Act concerning investment in credit union service organizations which does not specifically limit these organizations to "only" performing functions or providing services associated with routine credit union operations. The NCUA Board is persuaded that a credit union service organization need not be limited to providing services only to credit unions. Thus, credit union service organizations may provide services to other organizations as well as to credit unions. Statutory limitations will, however, continue to apply. Thus, credit union service organizations must be established for the primary purpose of serving credit unions, and the word "only" has been deleted.

2. Permissible Activities. Commenters had various suggestions for additions to the list of permissible activities and



...film equipment or storage facilities  
...another example of the type of  
...arrangement that is not adequately  
...addressed in the existing regulations.

#### Analysis of Proposed Change:

Sections 701.26 and 701.28 require that contracts or agreements entered into within the scope of these sections be approved by the NCUA Board. Section 701.27-1 requires notification to the regional director prior to purchasing accounting services and approval by the regional director prior to selling or leasing excess data processing capacity. Approval of the NCUA Board is required if the total proceeds derived from the sale of excess data processing capacity is to exceed 10 percent of a Federal credit union's total operating income. The proposed rule establishes the framework within which contracts can be entered into and eliminates the approval/notification process, with one exception. Approval of the NCUA Board will continue to be required if a Federal credit union's income derived from contractual agreements is to exceed 10 percent of total operating income during a calendar year.

The proposed rule incorporates those provisions of the existing sections which provide guidance to Federal credit union officials and assure NCUA access to Federal credit union records. The rule also retains the prohibition against credit union officials/employees having a pecuniary interest in or receiving salary or compensation from any vendor with which the Federal credit union enters into a contractual agreement. Regarding § 701.26(b)(2), it is envisioned that an operating or users' manual will be used to provide the specific information concerning the procedures to be used by the parties in complying with the terms of the contractual agreement. This provision should ensure a complete understanding of the provisions of the contract and the methodology used in its implementation.

Although definition of "Fixed Assets" and "Operational Functions" are provided, it is not intended that the examples given be considered all-inclusive. Generally speaking, a Federal credit union will be permitted to contract for any function or service which it would be authorized to provide itself, and to contract for sharing, utilization, or joint ownership of any fixed asset which it would be permitted to purchase itself.

Contractual agreements may expose the credit union to various liabilities and complications which are not easily recognizable. For this reason, it is recommended that Federal credit union

...entering into any contracts permitted by  
...the proposed rule.

The proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions (less than \$1 million in assets) because the proposed rule lessens the burden for these credit unions in a number of areas. Therefore, a Regulatory Flexibility Analysis is not required, 5 U.S.C. 605(b).

Rosemary Brady,

*Secretary of the Board.*

November 19, 1981.

(Sec. 120, 73 Stat. 635 (12 U.S.C. 1766), Sec. 209, 84 Stat. 1104 (12 U.S.C. 1789))

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

Accordingly, it is proposed that 12 CFR 701.26, 701.27-1, and 701.28 be removed and that a new 12 CFR 701.26 be added as set forth below.

##### § 701.26 Credit Union Service Contracts.

(a) *Definitions.* As used in this section:

(1) *Operational functions* means any activity or service which a Federal credit union would be authorized to provide itself.

(2) *Fixed Assets*—The definitions found in § 701.36(b) and the limitations found in § 701.36(c) are incorporated by reference.

(b) *Requirements in Contract.*

(1) A Federal credit union may enter into a contractual agreement with one or more credit unions or vendors for sharing, utilizing, renting, leasing, purchasing, selling, and/or joint ownership of fixed assets or operational functions. The board of directors of each Federal credit union is responsible for determining that the contractual agreement is in writing, complies with applicable Federal and/or state law, and provides for the following:

(i) The individual identity of the credit union and the confidentiality of the members in all transactions;

(ii) The types of operational functions to be provided, any limitations, and the costs of the services subject to periodic review;

(iii) The procedure for arbitrating disputes, assigning, mediating, or terminating the contractual agreement; and

(iv) The immediate availability and possession of the Federal credit union's books and records and any system controls related to the maintenance of the Federal credit union's records for examination by the National Credit

...supervisory committee.

(2) The files of the Federal credit union shall contain specific information concerning the procedures to be used by the parties to the contractual agreement in complying with its terms.

(3) A Federal credit union shall not pay in advance the actual or estimated charges for more than 3 months of contractual payments.

(4) A Federal credit union entering into a contractual agreement shall notify its surety company and obtain written assurance from surety that coverage extends to the operational functions and any losses incurred as a result of the contractual agreement.

(c) When a Federal credit union contracts with a vendor, no official or employee of the Federal credit union or member of their families may have a pecuniary interest in, nor receive any salary or compensation from the vendor.

(d) Unless otherwise approved by the regional director, a Federal credit union's income derived in any 1 calendar year from contractual agreements shall not exceed 10 percent of its total operating income.

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