



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

GC/JT:sg
#3500

October 2, 1987

Office of General Counsel

Bruce E. Pasternack, Esq.
Two Woodward Center
700 Lomas N.E., Suite 100
Albuquerque, New Mexico 87102

Dear Mr. Pasternack:

This is in response to your letter of June 29, 1987, regarding the conflict of interest prohibitions contained in Section 701.27(d)(6) of the NCUA Rules and Regulations.

As you know, Section 701.27(d)(6) prohibits individuals who serve as officials of, or are employed by, an affiliated Federal credit union, and immediate family members of such individuals, from receiving any salary, commission, investment income, or other income or compensation from a credit union service organization (CUSO) or from any person being served through the CUSO. You asked whether this section has been amended since March of 1986. You also enclosed an Article of a CUSO's Articles of Incorporation, and asked whether the Article would violate Section 701.27(d)(6).

Section 701.27(d)(6) has not been amended since March, 1986. However, the NCUA Board, at its July 15, 1987, meeting, issued a proposed rule to amend this provision. (Copy enclosed.)

Section 701.27, which pertains to FCU investments in and loans to CUSO's, does not regulate CUSO's directly, but rather establishes conditions for FCU investment in and loans to such organizations. It appears that the Article you submitted is directed more at regulating conflicts of interest between the CUSO and its directors, officers or stockholders rather than

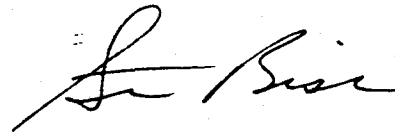
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conflicts between the CUSO and FCU officials and their immediate family members. Section 701.27, therefore, would appear to have minimal, if any, applicability to the Article.

We trust this has been of assistance.

Sincerely,



STEVEN R. BISKER
Assistant General Counsel

JT:sg

Enclosure

attorneys, and local prosecutors. The Attorney General, the district attorneys, and certain local prosecutors can obtain a mandatory civil penalty of up to \$2500 for a violation of each of the statutes. In addition, these agencies may seek a civil penalty of up to \$8,000 per day for each violation of an injunction issued pursuant to Business and Professions Code sections 17203 and 17535. Section 17204 and 17535 provide that actions for injunctive relief may also be brought by any person acting for the interests of itself, its members or the general public. Thus, California case law has held that individuals and organizations have standing to redress violations of these provisions even if they were not directly aggrieved by the violations.

(4) Comments Requested

Interested persons are invited to submit written comments on the state of California's application for an exemption from § 227.14 of the Board's Credit Practices Rule. The Board solicits comment on whether the provisions of California law affecting cosigners affords a level of protection to consumers that is substantially equivalent to, or greater than, the protections afforded by the cosigner provision of the Board's rule. In particular, the Board solicits comment on the following:

- Whether excluding spouses from receipt of a cosigner notice, under the California law, adversely affects the level of protection afforded married persons in light of the state's community property law.

- Whether the provisions of California law on unfair competition and misleading statements afford consumers a level of protection that is substantially equivalent to, or greater than, the provision of the Board's rule concerning misrepresentation of cosigner liability.

- Whether the remedy for violation of the California provisions affecting cosigners affords consumers a level of protection that is substantially equivalent to, or greater than, that afforded by the Board's rule.

- Whether California administers and enforces its laws, as they relate to cosigners of consumer credit obligations, effectively.

After the close of the comment period, based upon its own analysis and a review of the comments received, the Board will make its final determination on the exemption request. Notice of the final action will be published in the Federal Register.

List of Subjects in 12 CFR Part 227

Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance.

Board of Governors of the Federal Reserve System, July 23, 1987.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 87-17106 Filed 7-28-87; 8:45 am]
BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 703, and 721

Organization and Operations of Federal Credit Unions; Investment and Deposit Activities; and Federal Credit Union Insurance and Group Purchasing Activities

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: The NCUA Board proposes to amend its regulations on Investments in and Loans to Credit Union Service Organizations (12 CFR 701.27), FCU Ownership of Fixed Assets (12 CFR 701.36), Investment and Deposit Activities (12 CFR Part 703), and Federal Credit Union Insurance and Group Purchasing Activities (12 CFR Part 721) by revising the definition of the term "immediate family member" as used therein and by adding a new definition, "senior management employee," to those provisions of its regulations. The purpose of this proposal is to narrow the scope of the rules as they relate to potential conflicts of interest by credit union directors, committee members, employees, and their immediate family members. This proposal would provide consistency between these regulations and the final rule on member business loans issued by the NCUA Board on April 9, 1987.

DATE: Comments must be received on or before September 21, 1987.

ADDRESS: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Steven R. Bisker, Assistant General Counsel, at the above address or telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 1987, the NCUA Board issued final rules relating to member business loans made by federally-insured credit unions, and to

preferential treatment and prohibited fees on business and other loans. See, 52 FR 12365 (April 16, 1987). Those final rules defined the phrase "immediate family member" to mean "a spouse or other family member living in the same household" as a credit union official or senior management employee of a credit union. (12 CFR 701.21(c)(8), 701.21(d)(5), and 701.21(h)(1)(iv).) The phrase "senior management employees" was, in turn, defined to mean a credit union's chief executive officer, any assistant chief executive officers, the chief financial officer, and, in the case of prohibitions on business loans, any compensated director. (12 CFR 701.21(c)(8) and 701.21(h)(3).) The use of these definitions narrowed the application of the prohibition portions of the lending rules in order to avoid unnecessarily interfering with the ability of family members of credit union officials to do business with and provide services to a credit union, and yet should effectively eliminate conflicts of interest. The principal concern is with those officials that have the authority to make or influence decisions that can affect their pecuniary interest.

At the time the NCUA Board adopted the new lending rule amendments, it noted that it would review other provisions of its rules and regulations where the term "immediate family members" appears and consider revisions to make the use of the term consistent. (See, 52 FR 12365 at 12366.) Where appropriate, this would also include adding a definition of the term "senior management employees." The Board has done so and is now proposing amendments to the following sections of its rules: § 701.27 (c) and (d), credit union service organizations; § 701.36 (b) and (e), fixed assets; § 703.2 and 703.4, investment and deposit activities; and § 721.2(c), insurance and group purchasing activities.

Discussion

All of the rules proposed for amendment relate to potential conflicts of interest by credit union directors, committee members, employees, and their immediate family members. Section 701.27(d)(6) involves the prohibition on the receipt by such individuals of any salary, commission, investment income, or other income or compensation from a CUSO, either directly or indirectly, or from any person being served through the CUSO. Section 701.36 (e) concerns the prohibition (except if prior written NCUA approval is obtained) on the acquisition or lease of the credit union's premises from such individuals directly or from corporations

or partnerships in which they have a 10 percent or more ownership interest. Section 703.4 (e) prohibits the receipt by such individuals of pecuniary consideration in connection with the making of an investment or deposit by the credit union. And, lastly, § 721.2 (c) precludes such individuals from receiving any compensation or benefit, directly or indirectly, in conjunction with any insurance or group purchasing activity.

In each instance, the conflict of interest sought to be eliminated exists where the individuals involved are in a position of authority in the credit union so as to influence or make decisions that can affect their pecuniary interest. Most employees do not, as a practical matter, have such power. Therefore, the risk that a decision will be based on self-interest instead of the interest of the credit union is not readily present with lower level employees. Typically, only those employees in senior management, such as the manager, assistant manager, or comptroller, are in positions to make decisions or to influence decisions. The NCUA Board is proposing to amend §§ 701.27(d)(6), 701.36(e), 703.4(e), and 721.2(c) by substituting "senior management employee" for "employees" wherever the term appears. Additionally, the term "senior management employee" will be defined in each of these Sections consistent with the definition in the recently amended lending rule (§ 701.21(c)(8)).

These proposed rules will also revise the definition of "immediate family member" in §§ 701.27(b)(3), 701.36(b)(6), 703.2(i), and 721.2(c), to include only a spouse and other relatives living in the same household. Those commenting on the definition, as it was proposed in the business lending rule, asserted that the list of relatives included in the definitions (i.e., spouse, child, parent, grandchild, grandparent, brother or sister, or spouse of any such individual) was overly broad and unwarranted and the Board recognizes that this may also be the case with the current rules that it now proposes to amend. The prohibition has proven to be particularly onerous for credit unions located in small communities where the likelihood of a credit union involving itself with an immediate family member, as currently defined, is significant. Again, provided that all transactions and dealings with the family members, who would be excluded from the definition as proposed, are conducted at arm's length and in the best interest of the credit union, the Board believes that the overall effect of the amendments can be beneficial to credit unions. In this

regard, the Board requests comments on whether the amendments should specifically include requirements regarding the arm's length nature of transactions and the best interest of the credit union.

Request for Comments

In addition to comments on the amendments contained in this proposal and as requested above, the Board is interested in receiving comments on whether the individual amendments should also specify additional employee positions that are related to the credit union activity covered by each particular regulation.

Although the proposed amendments are designed to narrow the scope of the applicability of the various conflicts of interest provisions, the Board is concerned that there may be employee positions that, because of the nature of the job performed, should still be subject to conflict of interest proscriptions even though the particular employee may not be senior management or have general decisionmaking authority. For example, the current lending rule includes loan officers in the list of credit union personnel covered in the provision on prohibited fees. (§ 701.21(c)(8).) In a similar fashion, then, should the amendment to § 703.4, prohibited activities regarding investments and deposits, specifically apply to employees responsible for making credit union investments and deposits even though they may not be considered senior management employees? As another example, should employees responsible for the daily operations of a credit union's insurance and group purchasing activities be included in the prohibited fees section of Part 721 (§ 721.1(c)) if they are not senior management employees or make no decisions as to what types of services the credit union offers? Similar situations may also arise regarding CUSO's and fixed assets. The inclusion of specified positions in conjunction with the amendments now proposed would still narrow the applicability of the various sections since the current regulations apply to all employees. Comments are specifically requested in this area.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small credit unions (primarily those under \$1 million in assets). Further, these proposed rules relax

certain prohibitions and limitations. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The proposed changes do not impose any additional paperwork requirements.

List of Subjects in 12 CFR Parts 701, 703, and 721

Credit unions, Senior management employees, Immediate family members.

By the National Credit Union Administration Board on July 15, 1987.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulations as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for Part 701 continues to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1768, 1767, 1782, 1784, 1787, 1789, and 1798.

2. Section 701.27 is amended by revising paragraph (c)(3) and by adding paragraph (c)(5) to read as follows:

§ 701.27 Investments in and loans to credit union service organizations.

(c)

(3) *Immediate family member* means a spouse or other family member living in the same household.

(5) *Senior management employee* means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller).

3. Section 701.27(d)(6) is amended by removing, in the first sentence after the words "officials of, or", the words "are employed by" and by inserting in lieu thereof the words "senior management employees of." The second sentence is amended by removing the word "employee" after the words "official or" and by inserting in lieu thereof the words "senior management employee."

4. Section 701.36 is amended by revising paragraphs (b)(6), and (e)(1)-(3) and by adding paragraph (b)(8) to read as follows:

§ 701.36 FCU ownership of fixed assets.

(b) *Immediate family member* means spouse or other family member living in the same household.

(8) *Senior management employee* means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller).

(1) A director, member of the credit committee or supervisory committee, official, or senior management employee of the Federal credit union, or immediate family member of any such individual.

(2) A corporation in which any director, member of the credit committee or supervisory committee, official, or senior management employee, or immediate family member of any such individual, is an officer or director, or has a stock interest of 10 percent or more.

(3) A partnership in which any director, member of the credit committee or supervisory committee, official, or senior management employee, or immediate family member of any such individual is a general partner, or a limited partner with an interest of 10 percent or more.

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

5. The authority citation for Part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1766(a) and 1789(a)(11).

6. Section 703.2 is amended by revising paragraph (i), redesignating paragraphs (p), (q), (r), (s) and (t) as paragraphs (q), (r), (s), (t) and (u) and by adding a new paragraph (p) as follows:

§ 703.2 Definitions.

(i) *Immediate family member* means a spouse or other family member living in the same household.

(p) *Senior management employee* means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller).

§ 703.4 (Amended)

7. Section 703.4(e) is amended by adding after the words "committee members and", the words "senior management."

PART 721—FEDERAL CREDIT UNION INSURANCE AND GROUP PURCHASING ACTIVITIES

8. The authority citation for Part 721 is revised to read as follows:

Authority: 12 U.S.C. 1757(16), 1766 and 1789.

9. Section 721.2 is amended by revising paragraph (c) to read as follows:

§ 721.2 Reimbursement.

(c) No director, committee member, or senior management employee of a Federal credit union or any immediate family member of any such individual may receive any compensation or benefit, directly or indirectly, in conjunction with any activity under this regulation. For purposes of this section, "immediate family member" means a spouse or other family member living in the same household; and "senior management employee" means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller).

[FR Doc. 87-16939 Filed 7-28-87; 8:45 am] BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-86-AD]

Airworthiness Directives: British Aerospace Model BAe-146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to certain British Aerospace Model BAe-146 airplanes, which would require modification of the Direct Current (DC) electrical distribution control system. This action is prompted by a report of an unanticipated failure mode of the DC busbar system, which resulted in the discharge of the battery without

warning, and subsequent loss of both the Essential DC and Emergency DC busbars.

DATES: Comments must be received no later than September 28, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-86-AD, 17900 Pacific Highway South, C-68968, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68968, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-86-AD, 17900 Pacific

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