



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456

September 12, 1989

Office of General Counsel

GC\RRD:sg
SSIC 4650
89-0714

John W. Millazzo, President & CEO
Campus Federal Credit Union
P. O. Box 16049A
Baton Rouge, LA 70893

Re: State Guaranteed Student Loans (Your
July 3, 1989, Letter)

Dear Mr. Millazzo:

Your letter to Chairman Jepsen has been referred to this Office for a reply. We have reviewed the correspondence between Campus Federal Credit Union and NCUA Region III concerning sale of excess computer operating capacity, student loans, and loans to fraternal organizations. We hope the information and guidance below will assist your Credit Union in serving your members.

EXCESS COMPUTER OPERATING CAPACITY

Background

Campus Federal Credit Union ("Campus FCU") purchased equipment for share draft processing. Campus FCU's data processing requirements utilize about 20% of the equipment's capacity. The Campus board of directors would like to sell some of this excess capacity to other credit unions. The board questioned whether a credit union service corporation ("CUSO") should be formed in order to offer the service.

Analysis

Campus FCU may offer this service directly to others or through a CUSO. Section 701.26 of the NCUA's Rules and Regulations (12 C.F.R. §701.26) permits Federal credit unions ("FCU's") to

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sell data processing capacity, in excess of their immediate needs, to other credit unions. Enclosed is a letter dated April 13, 1987, on the subject. In general, an FCU may sell its data processing capacity in excess of its own immediate needs, but it may not be in the business of selling data processing. Please note the case of National Retailer Corp. v. Valley National Bank, 411 F. Supp. 308 (D. Ariz. 1976) aff'd, 604 F. 2d 32 (9th Cir. 1979) which held that a bank could not market or offer data processing services to the general public. The court held that such service was not within the incidental powers of a national bank.

A CUSO could be formed to offer data processing services. Section 701.27(e)(5)(i) of the NCUA Rules and Regulations (12 C.F.R. §701.27(e)(5)(i)) lists the permissible operational activities for CUSO's. "Data processing" is among the listed activities. CUSO's may provide services to other credit unions pursuant to Section 701.27(d)(4) of the CUSO regulation. Of course, an FCU investing in a CUSO must comply with all of the requirements of Section 701.27.

STUDENT LOANS

Background

Campus FCU offers guaranteed student loans to its members. Campus FCU is finding itself at a disadvantage when competing with other financial institutions because of the requirement that students receiving loans must be members of the credit union. Louisiana State University ("LSU") financial aid officials are reluctant to use Campus FCU as its student loan funding institution because all student loan applicants are not members of Campus FCU.

Analysis

Section 107(5) of the FCU Act (12 U.S.C. §1757(5)) is quite explicit when it limits an FCU's loan making authority "to members of the FCU, other credit unions, and credit union organizations." As you note, this limits Campus FCU's student loan activity to members. We are aware of some FCU's which pay a member's initial share in order for the person to become a member of the FCU. It is our opinion that such payments are a permissible promotional activity. If all students on the LSU campus are within your field of membership, any LSU student loan applicant could become a member of the FCU with the FCU paying the initial membership share.

LOANS TO FRATERNAL ORGANIZATIONS

Background

You requested guidance concerning loans to fraternal organizations organized at LSU. The loans are used for construction or purchase of fraternity or sorority housing. The NCUA examiner classified these loans as illegal because the loans were to nonnatural persons in excess of their shareholdings in the credit union. These loans also carried the endorsement of alumni members. In addition, the loans are guaranteed by the State of Louisiana through LSU. LSU will guarantee these loans up to 75% of the cost of construction or purchase amount. In most cases, the national fraternal organizations will provide additional guarantees.

Analysis

Government Guaranteed or Insured Loans

Section 107(5)(A)(iii) of the FCU Act (12 U.S.C. §1757(5)(A)(iii)) provides that an FCU may make:

a loan secured by the insurance or guarantee of, or with advance commitment to purchase the loan by, the Federal Government, a State government or any agency of either may be made for the maturity and under the terms and conditions specified in the law under which such insurance, guarantee, or commitment is provided;

Section 701.21(e) of the NCUA's Rules and Regulations (12 C.F.R. §701.21(e)) mirrors this Section of the FCU Act and also clarifies that the FCU may make such loans at the interest rate provided in the program.

Using this authority, Campus FCU may extend loans to member organizations for the purchase or construction of fraternity and sorority houses under the terms and conditions (maturity and loan interest rate) specified by the State of Louisiana for such loans. Your letter indicated that such loans were guaranteed in amounts up to 75% of the cost of construction or purchase price. This indicates that some loans could carry less than a 75% guarantee. The fact that some portion of these loans are insured or guaranteed by the State of Louisiana does not exempt Campus FCU from following sound business practices in extending such

loans. Campus FCU loans which carry less than a full government guarantee\insurance as to principal and interest are subject to safety and soundness concerns of the NCUA Regional Director and the NCUA Office of Examination and Insurance.

Classification as Business Loans

Section 701.21(h)(2)(i) of the NCUA's Rules and Regulations (12 C.F.R. §701.21(h)(2)(i)) provides, in part:

The board of directors must adopt specific business loan policies and review them at least annually. The policies shall, at a minimum, address the following:

* * *

(D) Maximum amount of credit union assets, in relation to reserves, that will be invested in a given category or type of business loan.

Section 701.21(h)(1)(i)(D) provides that the following shall not be considered a business loan:

(D) A loan, the repayment of which is fully insured or guaranteed, or where there is an advance commitment to purchase in full by, any agency of the Federal government or of a state or any of its political subdivisions.

Section 701.21(h)(2)(ii) provides:

Loans to One Borrower. Unless a greater amount is approved by the NCUA Board, the aggregate amount of outstanding member business loans to any one member or group of associated members shall not exceed 20% of the credit union's reserves. If any portion of a member business loan is fully . . . insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the Federal Government or of a state or any of its political subdivisions, such portion shall not be calculated in determining the 20% limitation.

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Unless such loans are fully insured or guaranteed as to principal and interest, they will be considered member business loans, and the uninsured\nonguaranteed portion must be considered in computing the 20% limitation on business loans provided in Section 701.21(h)(2)(ii).

Your letter indicated that the State of Louisiana, through the LSU, will guarantee up to 75% of the cost of construction or purchase price of on-campus fraternity and sorority houses. The portion not covered by a government guarantee must be considered in calculating the 20% business loan limitation.

Nonnatural Person Lending Limit

Article XII, Section 1, of the Standard FCU Bylaws provides:

* * *

Loans to a member other than a natural person shall not be in excess of its shareholdings in this credit union.

The fact that a portion of loans may be guaranteed by LSU has no effect on this bylaw requirement.

A standard bylaw amendment to Article XII, Section 1, permits greater flexibility by providing:

* * *

Loans to a member other than a natural person shall not be in excess of its shareholdings in this credit union, unless the loan is made jointly to one or more natural person members and a business organization in which they have a majority interest, or if the nonnatural person is an association, the loan is made jointly to a majority of the members of the association and to the association in its own right.

We recently approved a nonstandard bylaw amendment which provides somewhat more flexibility. The nonstandard bylaw provides:

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* * *

Loans to a member other than a natural person shall not be in excess of its shareholdings in this credit union, unless the loan is made jointly to one or more natural person members and a business organization in which they have majority interest, or if the nonnatural person is an association or professional organization made up of persons who are within the field of membership of this credit union, the loan shall be approved by the board of directors of such organization. The note and other legal documents evidencing the loan shall be signed on behalf of the organization by all the members of the board of directors of such organization.

Your letter to Region III (Atlanta) indicated that the sorority and fraternal organizations and LSU alumni groups are eligible for membership in Campus FCU and that individual members may be willing to co-sign on the loans. These two bylaw amendments may assist you in the loans in question. If you wish to adopt the nonstandard amendment, it must be submitted to your NCUA Regional Office for approval.

Sincerely,



HATTIE M. ULAN
Assistant General Counsel

Enclosures

cc: Regional Director, Region III (Atlanta)



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. 3046

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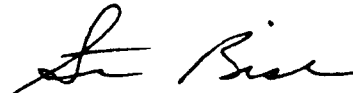
Stephen A. J. Eisenberg, Esq.

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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

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;

-Banks and Banking

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

"Accounting Service" means the maintenance of bookkeeping, accounting records related to the purposes and functions of a credit union by manual, mechanical or electronic methods, and the furnishing of reports and information derived from such records.

"Individual Identity" means that the identity of each participating Federal credit union is easily distinguishable from other credit unions and organizations participating in the service activities.

"Centralized management" means the single authority responsible for supervising, controlling and directing day-to-day operations of the service center.

One or more Federal credit unions may contract with a vendor or a Federal credit union to provide a credit union service center. The contract shall be in writing, shall have the approval of the Board, and shall provide for:

(1) The credit union's responsibility for maintaining the credit union's individual identity;

(2) Establishing minimum security standards and procedures in accordance with Part 748 (12 CFR Part 748);

(3) Complying with the mandatory requirements with regard to the advertising of insured status in accordance with Part 740 (12 CFR Part 740);

(4) Describing the services to be provided by the vendor and establishing the terms of these services subject to review and negotiation;

(5) Complying with the provisions of Part 744 concerning all services per-

(6) Immediate availability and possession of the Federal credit union's records and audit by the supervisory committee;

(7) Establishing centralized management in consonance with the board of directors of each credit union and controlling the affairs of the credit union;

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§ 701.27-1

(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 transacting contracted services; and

(xi) Terminating, assigning, and mediating the contract.

(2) The files of the Federal credit union shall contain specific information concerning the procedures to be used by the vendor in complying with the terms of the contract. Such information may be in the form of a standard operating or users manual.

(3) A Federal credit union, in addition to regular payments for services as provided under the contract, 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.

(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 termination of the contract.

(2) The Regional Director will investigate each request to participate in a credit union service center activity and will make a recommendation as to whether it should be approved or disapproved. The request, contract and the recommendation of the Regional Director shall be forwarded to the Board, which shall approve or disapprove 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 Federal 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 participating 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 reimbursement of necessary expenses incurred in connection with the vendor's activities.

(39 FR 44423, Dec. 24, 1974)

§ 701.27-1 Purchase and sale of accounting services.

(a) For the purposes of this section:

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

(b) A Federal credit union may purchase 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 include a provision requiring compliance with § 701.14, and a provision requiring the vendor to make any accounting records of the Federal credit union in his possession immediately available for examination by the Administration.

(c) A Federal credit union purchasing 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 Director in writing at least 30 days prior to the discontinuance of the arrangement.

(d) A Federal credit union, in addition to regular payments for services as provided under the written agreement, shall not pay in advance the

Proposed Rules

Federal Register

Vol. 46, No. 227

Wednesday, November 25, 1981

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 701.28 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), §§ 701.26 (Credit Union Service Center), 701.27-1 (Purchase and Sale of Accounting Services), and 701.28 (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, § 701.26 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 701.28 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

50.78 are issued under sec. 1810, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

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

5a 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 (202/452-3623).

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 Federal 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 (48 FR 57683 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 rule and the definition is deleted. Section 701.36 is also modified to delete the cross reference.

Four commenters recommended elimination of contract requirements because most of the provisions were standard contract requirements or stated elsewhere in the NCUA regulations. The NCUA Board concurs. With the exception of the requirement that books and records relating to the services provided to Federal credit unions be available to NCUA, all contract provision requirements have been removed. However, the NCUA Board is mindful of the fact that some credit union directors may not be aware of minimum contract requirements and will incorporate a list of recommended contract provisions in the next page change revision of the *Accounting Manual for Federal Credit Unions*.

Two commenters argued that the word vendor was too restrictive and that there may be instances where a Federal credit union may wish to enter into a contractual agreement with organizations other than vendors. The NCUA Board concurs and has changed the word vendor to organizations.

One commenter stated that there are instances where it may be expedient for a Federal credit union to act as a representative for another organization to facilitate the sale or sharing of its excess resources and requested comment on the applicability of the practice to this rule. The instance cited by the commenter was where credit unions with excess data processing time acted as a representative for a service organization. The credit unions sell their excess time to the service organization which re-sells it to other credit unions. The selling credit unions then represent the service organization by processing the work and are reimbursed by the service organization. This, according to the commenter, facilitates the sale of the excess time and obviates the need for the credit union, selling excess time, to get involved in other areas such as billing, customer service, and training.

The NCUA Board is of the opinion that there are many instances in joint operations and other resource sharing situations where a credit union acts as a representative of another credit union or organization in the normal course of business. Examples are sharing of management services, loan operations and negotiations with vendors for shared services or products. However, the situations under which a credit union represents another organization should be clearly stated in the contractual agreement.

Two commenters indicated the requirement for a Federal credit union to

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 the limitation of advance payments to other organizations because the limitation appears arbitrarily set and not reflective of normal business practice. The intent of the provision is to deter implicit investment in organizations that are not authorized in the Federal Credit Union Act. However, the NCUA Board is aware that there are instances where it may be advantageous to prepay for services for a longer period of time and is modifying the provision. Where an agreement calls for a prepayment for services greater than 90 days, it will be considered to be an investment in a credit union service organization under the investment authority delineated in Sections 107(7)(I) and 107(5)(D) of the Federal Credit Union Act (12 U.S.C. 1757(7)(I) and 12 U.S.C. 1757(5)(D)). Thus, all prepayments (in excess of 90 days) for services must be included in determining whether investments in credit union organizations are within the statutory limits delineated in Section 107(7)(I) of the Federal Credit Union Act.

Two commenters recommended deletion of the provision for surety bond requirements. One commenter pointed out that surety bond coverage requirements are already stated in the NCUA rules and regulations and did not need restating. The other commenter indicated that there are many situations where bond coverage would not be applicable or obtainable. The NCUA Board considers both points valid and has withdrawn this provision from the rule.

One commenter asked that the portion of the rule prohibiting officials, employees or family members from having an interest or receiving a salary from a contracted organization be liberalized. The commenter felt that by allowing organization employees to be on credit committees and on the boards of directors, communications between professionals and volunteers would improve and decision making would be facilitated. Another commenter indicated that this prohibition was adequately covered in Article XIX, Section IV of the *Federal Credit Union Bylaws*.

The NCUA Board concurs that the bylaw provisions are sufficient to guard against abuse and will drop this provision from the rule. However, the

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 agreement income 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 affecting credit union safety and soundness. Another commenter suggested NCUA monitor the activity and act when there are grounds for legitimate concerns in this area. The NCUA Board concurs and will drop the requirement from the rule. Contractual agreement income will be monitored during examinations and through surveillance of call reports submitted to NCUA.

Regulatory Flexibility Analysis

This rule will not have a significant economic impact on a substantial number of small credit unions (less than \$1 million in assets) because the 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).

Effective Date

Final rule is being made effective in less than 30 days because it relieves restrictions, 5 U.S.C. 553(d)(1).

Determination To Not Obtain Public Comments on the Modification of Section 701.36

The NCUA Board finds, for good cause, that obtaining public comment on the modification of § 701.36 is unnecessary because the modification is needed to eliminate cross reference provisions and does not change any other provision of the rule. Therefore, solicitation of public comment is not required, 5 U.S.C. 553(B).

List of Subjects in 12 CFR Part 701

Credit unions, Reporting requirements.

By the NCUA Board, July 7, 1982.

Rosemary Brady,
Secretary of the Board.

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

(Sec. 120, 73 Stat. 036 (12 U.S.C. 1766), sec. 209, 64 Stat. 1104 (12 U.S.C. 1769))

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.

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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

microfilm equipment or storage facilities is 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 in the scope of these sections be reviewed 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

supervisory committee-

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. 1768), 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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