

Department shall subtract from the maximum reimbursement amount any reimbursement already approved to be paid to the licensee. The resulting sum shall be the potential additional reimbursement to which the licensee may be entitled. This resulting sum will be adjusted after the approval of claims for work performed through December 31, 2007, to reflect the actual approved costs of work performed through that date.

§ 765.31 [Amended]

■ 6. Section 765.31 is amended by removing paragraph (a) and redesignating paragraphs (b) through (d) as paragraphs (a) through (c).

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703 and 742

Investment and Deposit Activities and Regulatory Flexibility Program

AGENCY: National Credit Union
Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its rule regarding the investment activities of Federal Credit Unions (FCUs). The amendments clarify and reformat the rule to make it easier to read and locate information. The amendments expand FCU investment authority to include purchasing equity-linked options for certain purposes and exempt RegFlex eligible FCUs from several investment restrictions. NCUA is also amending the Regulatory Flexibility Program to conform to the revisions to the investment rule.

DATES: The final rule is effective July 3, 2003.

FOR FURTHER INFORMATION CONTACT: Scott Hunt, Senior Investment Officer, Office of Strategic Program Support and Planning (OSPSP) at the above address or telephone (703) 518-6620; Dan Gordon, Senior Investment Officer, OSPSP at the above address or telephone; Kim Iverson, Program Officer, Office of Examination and Insurance, at the above address or telephone (703) 518-6360; or Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA identified part 703 of its rules as in need of revision. To that end,

NCUA issued an advance notice of proposed rulemaking (ANPR) on October 18, 2001. 66 FR 54168 (October 26, 2001). After considering the comments to the ANPR submitted by 38 commenters, NCUA issued a proposed rule on December 19, 2002. 67 FR 78996 (December 27, 2002). NCUA received 14 comment letters regarding the proposed rule: five from FCUs, one from a State credit union, five from financial services entities, and three from credit union trade organizations. The comments were generally supportive of the proposal.

B. Summary of Comments

1. Broker-dealers and Safekeeping of Investments

Throughout the rulemaking process, NCUA has expressed concern about the purchase of some brokered certificates of deposit (CDs). Deceptive practices or outright fraud on the part of some broker-dealers and safekeepers have caused losses for FCUs. NCUA does not believe, however, that more stringent standards on broker-dealers or safekeepers, such as those contemplated by the ANPR, would prevent losses. NCUA believes continued guidance to FCUs and prudent due diligence by FCUs is the best course of action. Therefore, NCUA is not making any substantive changes to broker-dealer and safekeeping requirements in this regard. The commenters generally supported this position.

The proposed rule permits the use of depository institutions whose broker-dealer activities are regulated by a State regulatory agency. This provides FCUs with greater access to broker-dealers. NCUA also believes additional broker-dealer competition promotes improved service, better execution, and reduced costs. The commenters supported this proposal. The Board adopts this proposed revision in the final rule.

Former § 703.50(c) exempts CD finders from the broker-dealer requirements. It was always NCUA's intent to carry this exemption forward in proposed § 703.8 as indicated in the preamble to the proposed rule. 67 FR 78996, 78996-97 (December 27, 2002). Specifically, if an FCU purchases a CD or share certificate directly from a bank, credit union, or other depository institution that issues the certificate, the FCU will not be bound by the broker-dealer requirements. This exemption was inadvertently omitted in the regulatory language in § 703.8 of the proposed rule through a clerical error. As stated in the proposal's preamble, NCUA indicated it was making no changes to the broker-dealer section of the rule in this regard. Thus, the

inclusion of this exemption in the final rule will not change the requirements pertaining to the use of broker-dealers.

To be consistent with the broker-dealer requirements, the proposed rule added a due diligence requirement that calls for an FCU to review a safekeeper's financial condition, in addition to its registration status, and retain the documentation used to approve a safekeeper. NCUA believes these requirements represent prudent, minimum practices that FCUs should follow when evaluating a safekeeper. In addition, the proposed rule permitted State-regulated trust companies to be safekeepers for FCUs. NCUA recognizes these firms can provide a sound alternative for FCUs.

The commenters overwhelmingly concurred with this aspect of the proposed rule. NCUA adopts this proposal in the final rule.

2. Expanded Investment Authorities

The Federal Credit Union Act (Act) enumerates FCU investment powers. 12 U.S.C. 1757(7), (8), and (15). NCUA has adopted regulatory prohibitions against certain investments and investment activities permitted by the Act on the basis of safety and soundness concerns. In revising the rule, NCUA has explored ways to expand FCU investment powers. Generally, those investments currently prohibited by regulation exhibit high risks or are unsuitable for many FCUs, such as stripped mortgage-backed securities or variable rate investments tied to non-domestic interest rates.

As one means of expanding investment powers, the proposed rule permits some FCUs to purchase commercial mortgage related securities (CMRS), subject to certain restrictions. Specifically, the proposed rule limits the purchase of CMRS, which are not otherwise permitted by § 107(7)(E) of the Act, 12 U.S.C. 1757(7)(E), to RegFlex eligible FCUs. 12 CFR part 742. Further, a RegFlex eligible FCU may purchase CMRS if the CMRS: (1) Are rated in one of the two highest rating categories by at least one nationally-recognized statistical rating organization; (2) otherwise meet the definitions of mortgage related security as defined in 15 U.S.C. 78c(a)(41) and CMRS as defined in proposed § 703.2; and (3) have an underlying pool of loans containing more than 50 loans with no one loan representing more than 10 percent of the pool. A RegFlex eligible FCU is limited to purchasing CMRS in an aggregate amount of up to 50 percent of its net worth. Most commenters supported NCUA's proposal to permit RegFlex eligible FCUs to purchase