

organization” is being broadened to provide federal credit unions (FCUs) greater flexibility in choosing appropriate loan participation partners.

DATES: Comments must be received on or before September 2, 2003.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. You are encouraged to fax comments to (703) 518-6319 or email comments to regcomments@ncua.gov instead of mailing or hand-delivering them. Whatever method you choose, *please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:

Background

Engaging in loan participations is an effective tool for FCUs to manage liquidity and concentration risk. It is also a way for FCUs to comply with NCUA or self-imposed lending limits. Additionally, small FCUs are able to improve the diversification of their loan portfolios by participating in loans originated by larger FCUs that have the resources to underwrite a wider variety of loan types. For these and other benefits, it is not surprising that FCU interest in loan participations appears to be increasing.

NCUA staff has identified § 701.22, the loan participation rule, as a regulation in need of updating and clarification. Accordingly, NCUA is proposing the following amendments to improve the rule.

Section 701.22 of NCUA's regulations provides that an FCU may engage in loan participations with “eligible organizations” and defines that term as a credit union, credit union organization, or financial organization. 12 CFR 701.22(b), 12 CFR 701.22(a)(2). The rule further defines “credit union organization” and “financial organization.” 12 CFR 701.22(a)(4) and (a)(5).

The Federal Credit Union Act (Act) defines “credit union organization” as “any organization as determined by the Board, which is established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of the credit unions they serve.” 12 U.S.C. 1757(5)(D). Section 701.22(a)(4) echoes this definition, but specifically excludes, among others, some CUSOs, which it describes as “corporations or other

businesses which principally provide services to credit union members as opposed to corporations or businesses whose business relates to the daily in-house operation of credit unions.” 12 CFR 701.22(a)(4). Formerly, NCUA's CUSO rule distinguished between CUSOs providing operational services to FCUs and those providing financial services to FCU members.

In a 1998 final rule, NCUA eliminated that distinction in the CUSO rule. 63 FR 10743 (March 5, 1998). Under NCUA's regulations, CUSOs are entities that engage in providing products and services related to the routine daily operations of credit unions to credit unions and credit union members. 12 CFR 712.3, 12 CFR 712.5. NCUA proposes to amend the definition of “credit union organization” in the loan participation rule to conform to NCUA's interpretation of that term in the CUSO rule.

The Act does not define the term “financial organization.” Section 701.22(a)(5) defines it as “any federally chartered or federally insured financial institution.” 12 CFR 701.22(a)(5). Although the Act is silent, the rule derives its definition from the legislative history of the 1977 public law that granted FCUs various additional authorities, including the authority to engage in loan participations. H.R. Rep. No. 95-23, at 12 (1977), *reprinted* in 1977 U.S.C.C.A.N. 115. In granting this authority, Congress expressed its intent to enhance the ability of FCUs to serve their members' loan demands. Congress also expressed its concern that originating FCUs must maintain discipline in the origination process. To ensure that discipline and good underwriting standards prevail, Congress requires originating FCUs to retain at least a ten percent interest in the face amount of all loans they participate out.

Consistent with congressional intent to enhance the ability of FCUs to serve their members' loan demands through participations, NCUA believes it is appropriate to expand the regulatory definition of “financial organization” to include state and federal government agencies. NCUA is aware that there are various state and federal government supported loan programs that are particularly geared to underserved borrowers. These types of programs, which include agricultural and small business lending, are ideally suited to the mission of FCUs. Also, this will give FCUs greater flexibility in choosing appropriate participation partners. NCUA does not read anything in the legislative history to suggest that

Congress would object to this limited and prudent amendment.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under one million dollars in assets). The proposed rule expands the pool of eligible organizations with whom an FCU may engage in loan participations, without imposing any additional regulatory burden. The proposed rule would not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

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