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PART 563—SAVINGS ASSOCIATIONS—OPERATIONS

- 7. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806; 42 U.S.C. 4106.

- 8. Revise the last sentence of the introductory paragraph of § 563.41(b) to read as follows:

§ 563.41 Transactions with affiliates.

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(b) * * * In addition, a savings association should read all references to “the Board” or “appropriate federal banking agency” to refer only to “OTS,” except for references at 12 CFR 223.2(a)(9)(iv), 223.3(h), 223.3(z), 223.14(c)(4), 223.43, and 223.55.

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§ 563.180 [Amended]

- 9. Amend § 563.180(c) by removing the last sentence.

PART 563g—SECURITIES OFFERINGS

- 10. The authority citation for part 563g continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78l, 78m, 78n, 78p, 78w.

§ 563g.1 [Amended]

- 11. In § 563g.1, amend paragraph (a)(6) by removing “Corporate and Securities Division” and by adding in lieu thereof “Business Transactions Division”; amend paragraph (a)(9) by removing “§ 563b.2(a)(27)” and adding in lieu thereof “§ 563b.25”; and amend paragraph (a)(10) by removing “§ 563b.2(a)(29)” and adding in lieu thereof “§ 563b.25”.

§ 563g.5 [Amended]

- 12. Amend § 563g.5(a) by removing the phrase “§ 563b.8(e)(1), (e)(3), and (e)(4), (f) through (q), and (s)” and adding in lieu thereof “§§ 563b.115(a), 563b.150(a)(6), 563b.155, 563b.180(b), and Form AC, General Instruction B”.

PART 575—MUTUAL HOLDING COMPANIES

- 13. The authority citation for part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

§ 575.7 [Amended]

- 14. Amend § 575.7 by removing “12 CFR Form OC” in paragraph (d)(6)(i) and by adding in lieu thereof “Form OC”.

Dated: December 17, 2003.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Deputy Director.

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NATIONAL CREDIT UNION ADMINISTRATION**12 CFR Part 701****Organization and Operations of Federal Credit Unions**

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is updating and clarifying the definitions of certain terms used in NCUA’s loan participation rule. Specifically, the definition of “credit union organization” is amended to conform to the terms of the credit union service organizations (CUSOs) rule. Also, the definition of “financial organization” is broadened to provide federal credit unions (FCUs) greater flexibility in choosing appropriate loan participation partners.

DATES: This final rule is effective January 29, 2004.

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

SUPPLEMENTARY INFORMATION:**A. Background**

NCUA issued a proposed rule on June 26, 2003 to update and clarify § 701.22, its loan participation rule. 68 FR 39866 (July 3, 2003). In the proposal, NCUA noted many of the benefits loan participation offers FCUs. Specifically, engaging in loan participations is an effective tool for FCUs to manage liquidity and concentration risk. Loan participation is also a way for FCUs to comply with NCUA or self-imposed lending limits. 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.

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, 712.5. In the June 2003 proposal, NCUA proposed 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.

Consistent with congressional intent to enhance the ability of FCUs to serve their members’ loan demands through participations, NCUA proposed 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, the proposal was intended to afford FCUs