- Article III, Section 4—Delete the $1 transfer fee (outdated);
- Article IV—Delete the reference to passbook accounts (outdated);
- Article XIII—Delete this section on reserves (duplicative of the regulations); and
- Article XX—Delete this section on operation following an attack on the United States (outdated).

In conjunction with deleting the outdated provisions, NCUA is committed to ensuring that FCUs operate under state-of-the-art corporate governance procedures. Wherever possible, consistent with safety and soundness and fairness to members, we are seeking to move toward greater flexibility. Some of the areas that we have identified for modernization and flexibility are Article V, Meeting of Members; Article VI, Elections; Article VII, Board of Directors; and Article VIII, Board Officers, Management Officials and Executive Committee. Comments on how to modernize these provisions, as well as other areas in need of modernization, are requested.

4. Upon revision of the bylaws, should FCUs be required to adopt the revised FCU Bylaws? The Board is grappling with the issue of whether FCUs should be required to adopt the revised bylaws. On the one hand, the Board believes that consistent bylaws among FCUs is preferable. On the other hand, the Board recognizes that a complete revision of an FCU's bylaws may create a hardship for some FCUs. The Board requests comment on whether all FCUs should be required to adopt the new bylaws and if so, what would be a reasonable time-frame for compliance.

The NCUA Board is seeking comments on all of the above mentioned possible means of simplifying and modernizing the bylaws, including the likely effect of such changes on the FCUs and their members. The Board is also seeking suggestions on any other ways that the bylaws might be streamlined, simplified and clarified. Based upon the comments, the Board will issue a proposed rule with proposed bylaws and another request for comments. Based upon those comments, the Board will issue a final rule.

By the National Credit Union Administration Board on March 7, 1997.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–6380 Filed 3–12–97; 8:45 am]

BILLING CODE 7535–01–P

12 CFR Parts 701, 712 and 740

Organization and Operations of Federal Credit Unions; Credit Union Service Organizations; Advertising

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The NCUA is proposing to update, clarify and streamline existing rules concerning credit union service organizations (CUSOs), a common means of outside provision of services to federal credit unions (FCUs) and to credit union members. The intended effect of the proposal is to reduce regulatory burden, maintain safety and soundness, and ensure the continuity and growth of services to FCUs and their members conducted through CUSOs. Related conforming changes are also proposed to amend NCUA's rules on credit union service contract and credit union advertising requirements.

DATES: Comments must be received on or before May 12, 1997.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. Post comments on NCUA's electronic bulletin board by dialing (703) 518–6480 or to NCUA's webpage on the Internet at http.www@NCUA.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Martin ''Sparky'' Conrey, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540; or Linda Groth, State Program Officer, Division of Supervision, Office of Examination and Insurance, at the above address or telephone: (703) 518–6360.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

A. General

In 1977, Section 107 of the Federal Credit Union Act (12 U.S.C. 1757) was amended to authorize federal credit unions (FCUs) to invest in, and make loans to, CUSOs subject to certain funding limits and other regulatory restrictions. The first CUSO rule was promulgated in 1979; the last major revision of this rule was in 1986. In general, the results of the 1986 revision have been very positive. Nonetheless, over ten years of experience with the regulation indicates that there may be a need for additional simplification, clarification, and improvement.

In particular, NCUA is aware that certain business and legal developments make this a good time to review and update the CUSO rule. NCUA staff researched the relevant regulations, guidance, legal interpretations and reporting requirements of NCUA and the other federal financial institution regulators. In addition, NCUA is conducting a review of its regulations pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review and the NCUA Board's Regulatory Relief Project. The purpose of this notice of proposed rulemaking is to identify and request public comment on reducing regulatory burden and increasing the flexibility and usefulness of CUSOs, while ensuring the safety and soundness of FCUs and the National Credit Union Share Insurance Fund (NCUSIF).

In providing comments upon the proposed rule, commenters are requested to keep in mind the needs of small credit unions, especially community development and low-income designated credit unions and their members. CUSOs provide an ideal means for smaller credit unions to expand the types of products and services offered to their memberships, offer economies of scale, enhance members' lives, and increase hours of service and locations, through automated teller machines (ATMs), service centers, and other CUSO services. CUSOs can result in more favorable penetration rates of potential members through availability of financial services that might not otherwise be available and can result in a transfer of knowledge and expertise from larger, full-service credit unions to smaller, more limited service credit unions, which can have long-term positive implications upon safety and soundness. Lately, NCUA has been concerned over some reports that smaller credit unions have been unable to meet minimum investment or other eligibility requirements in order to partake of CUSO services. For this reason, NCUA is weighing various options to increase smaller credit union utilization of CUSO services. One means might be through informal guidance, such as an NCUA Letter to Credit Unions, regarding smaller credit union participation in CUSOs. Another means might be through informal understandings with the CUSO industry regarding possible incentives to be offered to smaller credit unions, such as a reduction in, or waiver of, ordinary transaction charges, or a lowered minimum investment or deposit amount

in order to obtain CUSO services. For example, NCUA is currently reviewing Interpretive Ruling and Policy Statement (IRPS) No. 79–6, Donations/ Contributions, 44 FR 56691 (October 2, 1979) to determine whether restrictions are necessary upon the donative and charitable activity of FCUs to other credit unions. NCUA might also consider express authority for *de minimis* equity investments in community organizations, such as certain CUSOs, as part of the IRPS 79–6 review. Certainly, NCUA is interested in soliciting comments on these, and other, ideas to increase the availability of CUSO services to small credit unions, their members, and their potential members.

NCUA notes that the proposed corporate credit union rule contains a new section on corporate CUSOs that would apply instead of the provisions of the natural person credit union CUSO rule, as is the case currently. Proposed Rule, 61 FR 28085, 28106 (June 4, 1996). Therefore, while any corporate credit unions are welcome to comment on this proposal, such credit unions should keep in mind the possibility that this rule may not apply to their institutions.

B. Section-by-Section Analysis

Proposed Section 701.26(b), Credit Union Service Contracts

NCUA solicits comments on whether current section 701.26(b) of its rules should be removed. That section states that when a vendor service contract requires the advance payment of more than 3 months, such payment is deemed an investment in a CUSO subject to section 701.27 of NCUA's rules. Current business practices of many vendors either require such payments or give a discount to the purchasing credit union for paying in advance. Not all vendors are CUSOs, or lend themselves to having the CUSO rule applied to them. NCUA asks whether section 701.26(b) is outdated, imposes regulatory burdens, and is unnecessary. It is proposed to be removed.

Proposed Part 712

In order to assist readers of the CUSO rule, NCUA proposes to remove current section 701.27 and replace it with a new Part 712, which Part is now unoccupied. Since the rule applies to FCUs, but is of much interest to other parties, such as CUSOs and other CUSO investors, it is hoped that by giving CUSOs their own section of NCUA's Rules and Regulations, the rule will be more prominently featured and better known, resulting in increased compliance and in a reduction of NCUA staff time spent interpreting the regulation to interested parties. Raising the rule to a part also results in more convenient citations with fewer subsections. The most noticeable change in proposed Part 712 is the use of a Plain English question and answer format. Plain English is being promoted within the Federal government as a means to increase regulatory comprehension and compliance for users of regulations. An intended consequence of this format, other than anticipated increased compliance, is a lessening of misunderstandings caused by vague or unclear standard regulatory language, which also results in increased administrative efficiency. This revision and redesignation is done in the spirit of regulatory review, reinvention, and renewal. Comment is requested on the use of the Plain English format, or alternative formats that could be used to achieve the goals of the Plain English movement.

Proposed Section 712.1, What does this part cover?

Proposed section 712.1 condenses existing section 701.27(a), Scope, by eliminating statutory citations and a summary of rule requirements contained elsewhere in the rule. No change in the scope of the rule is intended by the proposed amendment.

The term ''affiliated credit union'' is used to represent the spectrum of credit unions that are eligible to make the services of a CUSO available to their membership within the customer base requirements of the CUSO rule. Under the current rule, ''affiliated credit unions'' are those credit unions that either invest in, or lend to, a particular CUSO. FCUs that are not an ''affiliated credit union'' of a CUSO may allow services of that CUSO to be available to their membership through the group purchasing rule. 12 CFR Part 721. The current arrangement has the effect of making members of non-affiliated credit unions count as nonmembers for purposes of the customer base requirements of the CUSO rule. To correct this anomaly, the proposed revision adds to the definition of ''affiliated credit union'' those credit unions that simply contract with a CUSO for provision of services (something currently done under the group purchasing rule), in addition to investor and lender credit unions of the CUSO. The result of this is not to penalize CUSOs for serving members of credit unions that may be permissibly served under the group purchasing rule. Comments are requested on whether this amendment realizes its goal of permitting CUSO services to continue to be provided to credit union members of credit unions not investing in, or lending to, the CUSO without violating CUSO customer base requirements.

In the interests of Plain English, the term ''affiliated credit union'' is shortened to ''you'' in most of Part 712. When a requirement applies only to affiliated credit unions that have loans to, or investments in, CUSOs (e.g., proposed sections 712.2(a-c), 712.3(a-d), 712.4(a), 712.7, and 712.9) or to affiliated credit unions with a 10% equity interest in a CUSO (e.g., proposed section 712.4(b)), the narrowed application is noted in the adjacent rule language. Therefore, readers should be careful to read the term ''you'' in context of surrounding language. ''You'' does not mean all affiliated credit unions at all times in all places.

Proposed Section 712.2, How much can you invest in, or loan to, CUSOs, and what parties may be involved?

The proposed revision would eliminate existing section 701.27(b), Limits imposed by the FCU Act, as being repetitive of other rule provisions. The statutory provisions of the FCU Act are, and would continue to be under the proposal, completely incorporated into other provisions of the CUSO rule. Provisions concerning funding limitations and CUSO parties, currently in section 701.27(d)(1), would be contained in proposed section 712.2.

Proposed Limits on Funding

The funding limitations contained in proposed section 701.2 (a) and (b) are statutory in nature and required by Sections 107(5)(D) and (7)(I) of the FCU Act. 12 U.S.C. 1757(5)(D) and (7)(I). An FCU cannot invest more than one percent of its paid-in and unimpaired capital and surplus in CUSOs. Nor can an FCU loan more than one percent of its paid-in and unimpaired capital and surplus to CUSOs. Paid-in and unimpaired capital and surplus means shares and undivided earnings.

NCUA staff would like to clarify the scope of covered CUSO investments and loans. In the past, NCUA has deemed all of the following to be either loan or investment equivalents in the context of the CUSO rule: standby letter of credit issued by an FCU to cover a CUSO; sale and leaseback transactions; installment sales and other similar equipment financings; payment of CUSO expenses by FCU, such as subsidies; guarantees of CUSO debt or purchase of CUSO debentures; FCU pledge and guarantee of loans from other entities to the CUSO; and FCU spin-off of assets to CUSOs. All of these loan and investment cash

equivalents are used in determining the actual aggregate cash outlay figure.

For compliance purposes, FCUs should generally use the aggregate cash outlay figure in order to compute the regulatory CUSO investment and loan limits. This number would equal the total amount of FCU funds either invested in, lent to, or available to be lent under a line of credit with the FCU to, the CUSO. If an FCU accounts for its CUSO using the cost method consistent with Generally Accepted Accounting Principles (GAAP) and writes down the investment because of other than temporary impairment, the written down amount becomes the new basis and computes into the new aggregate cash outlay figure.

Calculation of the CUSO funding limits is a separate issue from reporting CUSO investments and loans under GAAP. GAAP requires one of three measurement options—the cost method, equity method, or consolidated financial statements—depending upon the degree of ownership an FCU has in a CUSO. FCU financial reporting of CUSO activity should follow GAAP. The definition of ''paid-in and unimpaired capital and surplus'' is unchanged in the proposal from the current definition in section 701.27(c)(4). The content of the provision regarding parties eligible to be CUSO investors or lenders, proposed section 712.2(c), remains unchanged from the current reference in section 701.27(d)(1).

Proposed Section 712.3, What are the characteristics of, and what requirements apply to, CUSOs?

The proposed revision incorporates existing provisions on Structure, currently section 701.27(d)(2), Customer base, currently section 701.27(d)(4), Accounting procedures and access to information, currently section 701.27(d)(7), and Compliance with other laws, currently section 701.27(e), into new section 712.3.

Proposed Structure

For consistency purposes, NCUA proposes to add the limited liability company (LLC) format to the existing permissible CUSO entity structures in proposed section 712.3(a). Definitions for three new terms are proposed to be added to this paragraph, ''corporation,'' ''limited liability company,'' and ''limited partnership.'' The terms ''corporation'' and ''limited partnership'' are meant to clarify existing NCUA interpretations regarding the current, permissible forms of a CUSO. Corporations are creatures of statute, generally formed by a combination of steps, including the filing of articles of incorporation, the drafting and implementation of bylaws, and being capitalized through the issuance of stock and/or bonds. A limited partnership is also a creature of statute, generally formed by filing with the state a certificate of limited partnership. Many limited partnerships also have a limited partnership agreement which details partnership specifics. Similar to both corporations and limited partnerships, an LLC is a noncorporate business in which all of the member-owners have limited liability and in which members can actively participate in management. Generally, an LLC is created by filing articles of organization with the state. Most LLCs also have an operating agreement, which sets forth the managers' and members' rights and obligations and management specifics. In some states, the LLC format provides investors limited liability equivalent to that of the corporation or limited partnership formats. However, in many states the LLC laws have not yet been tested and upheld in the courts, and state laws are not uniform.

NCUA views the lack of LLC law uniformity among the various states as a problem. States have often relied upon uniform acts to provide consistency and promote comity between the various states. For examples, many states have adopted a form of either the Model Business Corporation Act or the Revised Model Business Corporation Act, and most states have adopted either the Uniform Limited Partnership Act or the Revised Uniform Limited Partnership Act. NCUA has had many years of experience with these uniform laws through CUSOs formed in both the corporate format and limited partnership format. However, unlike the uniform corporation and limited partnership laws, the Uniform Limited Liability Company Act (ULLCA), adopted by the National Conference of Commissioners on Uniform State Laws in 1994, has not been adopted by any states.

Other potential negatives also exist. For example, most states permit any LLC member to withdraw from an LLC at any time and receive the fair market value of his or her membership interest. This can trigger a capital crisis or act as a means for LLC members holding larger interests to control other LLC members to the detriment of the LLC. This potential instability may make it harder for the LLC CUSO to attract working capital and talented employees. In addition, most LLC acts specify that each LLC member is entitled to an equal vote on each LLC matter and that each member has full power and authority to act as an agent of the LLC. Most LLC acts, while permitting LLC economic interests to be freely transferable, permit management (voting and agency rights) to be transferable only with the consent of all other LLC members. These unique strictures of the LLC format may lead to management, operational, and accountability problems not seen in the corporate and limited partnership formats. Also, taxation issues regarding a nonprofit, nontaxable entity's investment in an LLC are unclear. NCUA solicits information regarding the likely taxation of a nonprofit, nontaxable entity's investment as an LLC member. In particular, NCUA is interested in reviewing an Internal Revenue Service (IRS) advance ruling regarding this issue. If one does not currently exist NCUA may suspend a resolution of the LLC issue until such an IRS advance ruling does exist.

It is critical that a CUSO be of a proven format that will insulate FCU investors from liabilities incurred by the CUSO. The proposal limits the availability of the LLC format to those states where an FCU can obtain written legal advice that the state of formation's laws will provide limited liability to the investing FCU equivalent to that of a shareholder in a corporation or as a limited partner in a limited partnership. However, comment is requested on other alternative definitions that would provide equal assurance to NCUA of the limited liability available to LLCs in various states. Attention to issues of ease of examination, administrative application, and enforcement should also be paid.

NCUA notes that CUSOs, as state-chartered entities, are subject to relevant federal, state and local taxes. Being taxable entities, CUSOs may take advantage of appropriate tax options, such as electing cooperative tax status in a proper situation.

However, CUSOs will not be permitted to attempt to evade NCUA's statutory and regulatory requirements. For example, the CUSO rule applies to all levels or tiers of a CUSO's structure. Therefore, any entity in which a CUSO invests will also be treated as a CUSO subject to the CUSO rule. In other words, all tiers of a CUSO are also CUSOs. Also, a CUSO will not be permitted to evade the limited liability insulation of the limited partnership format by forming a corporation CUSO to be a general partner of a limited partnership CUSO. Substance over form will control, and NCUA will collapse such a transaction to its essence deeming it the formation of a general partnership CUSO, which is now, and is proposed to remain, impermissible.

Proposed Customer Base

Proposed section 712.3(b) deletes the cross-reference for the definition of ''affiliated credit union'' to the definitions paragraph that appears in current section 701.27(d)(4). The proposed rule has no separate paragraph for definitions; instead, definitions appear next to their first use in the regulatory text. Otherwise, the content of the proposed section 712.3(b) remains unchanged from current section 701.27(d)(4). NCUA is soliciting comments on whether further guidance should be offered on the definition of ''primarily serves'' in the customer base requirement. In the 1986 final CUSO rule preamble, the Board stated that defining the term as a percentage of business or percentage of customers could prove arbitrary. In the past, NCUA's definition of the term ''primarily serves'' has depended upon several variables, such as: type of business(es) provided; number of affiliated members served; gross or net revenues derived from affiliated members; amount of affiliated members' assets under management; number of policies sold to affiliated members; number of services provided to affiliated members; and availability/access of services to affiliated members. Since CUSO permissible services and activities vary so much by business, and since many CUSOs are engaged in multiple permissible services and activities, coming to a simple standard applicable to all lines of business and all CUSOs is problematic. Still, if a simple, equitable standard could be applied, NCUA may not be adverse to using it. In providing comments, commenters are asked to consider the issues of ease of administrative application and enforcement.

Proposed FCU and CUSO Accounting; Access to Information

Proposed sections 712.3(c) and (d) contain no changes from current sections 701.27(d)(7)(i) and (ii). However, NCUA would like to obtain comment on a few aspects of the current rule. First, NCUA is soliciting comments on whether NCUA examination and supervision authority over CUSOs should be strengthened. Both the Office of Thrift Supervision (OTS), which charters and supervises federal savings associations, and the Office of the Comptroller of the Currency (OCC), which charters and supervises national banks, subject their regulated financial institutions' subsidiaries to examination and supervision ''in the same manner and to the same extent'' as the parent financial institution. 12 CFR 5.34(d)(3)(OCC) and 559.3(o)(OTS). NCUA believes that this approach might be superior to the current approach of a contractual right of review in several ways. It would make it easier for NCUA to react quickly and more directly to situations involving CUSO safety and soundness. It would also enable NCUA to better protect the NCUSIF from potential FCU losses due to CUSO losses. Presently, NCUA's main recourse is through threatened divestments or disposals of CUSO interests and loans. NCUA is also concerned that CUSOs performing critical, core functions for affiliated credit unions,[1] may disastrously affect affiliated credit union services if the CUSOs were to fail, suspend services, or experience another situation resulting in discontinuance of services. For example in instances where member transactions flow through the CUSO, credit unions could be at risk of losing much more than the amount of their CUSO investment or loan. However, NCUA realizes that treating CUSOs as an extension of its affiliated credit unions might also have some drawbacks as well. It would be a factor a court could consider in piercing the corporate veil and finding liability over to a credit union investor or lender. It would be a major change from existing practice, which for the vast majority of CUSOs has worked very well. For these reasons, NCUA is interested in public comment regarding the best scope of review or examination and supervision authority of CUSOs.

Commenters are also asked to address issues concerning a middle ground, such as requiring CUSOs to adhere contractually to any conditions in writing imposed upon their business by the NCUA. Currently, both OTS and OCC may impose conditions in writing upon the subsidiaries of their regulated financial institutions. 12 CFR 5.34(d)(4)(OCC) and 559.1(b)(OTS). Another possibility would be to strengthen the existing audit and reporting requirements further, or to require CUSOs to adopt specified policies, procedures, and other internal safety and soundness controls.

Commenters are also requested to comment on whether NCUA should charge a review or examination fee for conducting CUSO supervision activities. Currently, the OTS may assess a subsidiary examination fee. 12 CFR 559.3(o). More intensive CUSO reviews or examinations would require more specialized examiner training and take time to complete. On average, it currently takes at least one week to finish a CUSO review. If all CUSOs were reviewed on a regular basis, it could add a substantial strain on NCUA's budget and resources. A CUSO examination fee would be one means to ensure that the cost for this program would be borne by CUSOs and not all federally insured and federally charted credit unions, many of which do not utilize CUSO services.

Additionally, commenters are reminded that: CUSOs must follow GAAP for financial reporting purposes; affiliated credit unions must follow GAAP or alternative accepted regulatory accounting practices (RAP). Further, CUSOs must obtain audits consistent with generally accepted auditing standards (GAAS). NCUA interprets GAAP to mean compliance with standards of the Financial Accounting Standards Board (FASB) and related hierarchy, and GAAS to mean auditing standards issued by the American Institute of Certified Public Accountants (AICPA), unless otherwise determined by NCUA.

NCUA recommends that a CPA performing an opinion audit of the financial statements of an FCU that uses a CUSO to process transactions consider the guidance in the AICPA's Statement on Auditing Standards (SAS) No. 70, Reports on the Processing of Transactions by Service Organizations, when planning and performing the audit. SAS No. 70 provides guidance

[1] As a point of beginning, NCUA considers the following a list of such critical, core services and activities: (1) Share-related core services. Data processing of share deposits, withdrawals, and other account transactions; Operations conducting member share transactions for credit unions, including service center branches, remote service operations and ATMs; Provision of share account related clerical, professional, or management services; Share draft and deposit posting, sorting and processing; ACH services; Advertising, brokerage, and other services to procure and retain share accounts; Computation and posting of dividends and other credits and charges; Preparation and mailing of share drafts, statements, notices and similar items; (2) Credit-related core services. Data processing of loan applications, evaluations, extensions, collections, and payments; Making, acquiring, servicing, warehousing or otherwise processing member loans or other extensions of credit for a credit union, including consumer loans, credit card loans, mortgage loans, business loans and loan equivalents, such as leasing and indirect lending programs; Operations conducting lending activity for credit unions, including service center branches, remote service operations, ATMs, and loan production offices; Advertising, brokerage, and other services to procure and retain loans; Advising, structuring, and arranging extensions of credit; Provision of credit analysis services; Provision of credit account related clerical, professional, or management services; and (3) Other related core services. General ledger data processing; Management, development, sale or lease of affiliated credit union fixed assets; Record retention, security and disaster recovery services; Provision of investment advice, counseling, or services; Provision of liquidity management, investment, advisory and consulting services; Development and administration of personnel benefit programs, including life insurance, health insurance, and pension and retirement plans.

when an FCU obtains either or both of the following services from a CUSO: (1) executing transactions and maintaining the related accountability; and (2) recording transactions and processing related data. The AICPA recommends SAS 70 reports be completed in CUSO trust companies that invest and hold assets for FCU employee benefit plans; CUSO mortgage bankers that service mortgages for FCUs; electronic data processing (EDP) service centers that process transactions and related data for FCUs; and other situations in which a CUSO develops, provides and maintains the software used by FCUs. The SAS 70 report on policies and procedures placed in operation and tests of operating effectiveness are crucial in keeping FCUs informed of internal control weaknesses of CUSOs performing core functions of the FCU. NCUA requests comment on this approach.

NCUA also clarifies that the current requirement for a CPA audit means an opinion audit and nothing less. The audit must be an audit of the separate CUSO entity and not simply an audit of the FCU's financial statements prepared on a consolidated basis, unless the CUSO is a wholly-owned CUSO. The reason for this longstanding position is that all credit unions investing in the CUSO need to be aware of any potential risks in their CUSO. This clarification reflects current practice and policy.

Compliance with Other Laws

Proposed section 712.3(e) remains unchanged from current section 701.27(e). NCUA has interpreted this requirement to apply not only to laws applicable to the proper maintenance of either corporate or limited partnership format, such as fee, filing and tax requirements, but also to any other laws applicable to the nature of the CUSO's business. For instance, an insurance agency CUSO must comply with state insurance laws and regulations. Any CUSO that classifies as a franchise would need to follow federal and state franchising laws. Any CUSO service center would need to follow all applicable federal consumer protection laws related to its activities, as well as other relevant laws applicable to FCUs, such as those relating to supervisory committee access (12 CFR 701.12–.13); loans to members (12 CFR 701.21); truth in savings (12 CFR Part 707); advertising (12 CFR Part 740); share insurance (12 CFR Part 745); security program, report of suspicious activity, and bank secrecy act compliance (12 CFR Part 748); records preservation and retention (12 CFR Part 749); and relevant bylaw requirements, such as those relating to the confidentiality of member records (Standard Federal Credit Union Bylaws, NCUA Publication No. 8001).

Proposed Section 712.4, What must you and a CUSO do to maintain separate corporate identities?

The proposed revision retains a version of the legal opinion requirement of current section 701.27(d)(3), and adds a requirement that corporate separateness be maintained between the FCU and the CUSO.

Proposed Separate Corporate Existence

The language used in proposed section 712.4(a)(1–6) is borrowed from the OTS rules applicable to federal savings and loan service corporations. 12 CFR 559.10. NCUA currently recommends such operating practices in the NCUA Examiner's Guide, but believes that codifying these guidelines into a rule will help to publicize the practices, provide clear brightlines for compliance, provide continuing guidance during the life of the CUSO, and not carry the drawbacks of solely relying upon the legal opinion requirement. NCUA is not suggesting that a failure to follow one or more or all of such suggested practices by an FCU and its CUSO should cause a court to ignore the separate corporate existence of the CUSO. Nor is NCUA suggesting that attorney involvement is unwise or unnecessary for FCUs contemplating CUSO involvement. Quite to the contrary, NCUA encourages legal, accounting, tax advisor, and other consultant involvement in matters affecting CUSO investments and loans. Legal opinions are important, but may not be sufficient in and of themselves to achieve safety and soundness and continued corporate separateness. However, by following the proposed requirements, an FCU should be able to avoid potential exposure for CUSO obligations. Comment is requested on this approach.

In addition, NCUA has long interpreted the Act to require as minimum coverage that an FCU's fidelity bond provide coverage for the fraud or dishonesty of all employees, directors, officers, and supervisory and committee members. 12 U.S.C. 1766(h); 12 CFR 701.20(c). Some question has arisen as to whether the directors and employees of a CUSO should be covered by the fidelity bond of the FCU investor or lender of the CUSO. This point of law is currently unsettled. After some initial research, it seems that the insurance industry makes a wide variety of insurance products available to CUSOs that are similar to the FCU fidelity bond in coverage. A basic Commercial Crime Policy can include coverage for employee dishonesty, theft, disappearance and destruction, and depositor's forgery. Similarly, mortgage service CUSOs generally must have a bond meeting secondary mortgage market requirements, such as a Financial Institutions Bond Standard Form No. 15 (Mortgage Bankers Blanket Bond Policy). Likewise, a securities brokerage CUSO often will be a member of the National Association of Securities Dealers (NASD), and will meet NASD bonding requirements through a Financial Institutions Bond Standard Form No. 14 (Security Brokers Blanket Bond). NCUA strongly encourages CUSOs to maintain business insurance adequate to meet the CUSO's needs as determined by each CUSO's board of directors and management. At this time, NCUA does not believe that it is necessary to codify any CUSO bonding or insurance requirements, however, commenters are urged to respond as to whether a CUSO bond or insurance requirement is necessary, and, if so, given the variances in CUSO bond or insurance options available, what the requirement should contain and achieve.

Proposed Legal Opinion

In current section 701.27(d)(3), an FCU must obtain a written legal opinion as to whether the CUSO is established in a manner that will limit the FCU's potential exposure to no more than the amount invested in, or lent to, the CUSO. The legal opinion requirement does not require updating as new services are offered, nor does the legal opinion track management practices at a CUSO that could lead to liability exposure to the affiliated credit union. In addition, some credit union attorneys have questioned the implication that the rule requires lawyers to act as guarantors or sureties of a CUSO's correct formation and continued legal existence. To remedy these weaknesses, NCUA proposes to amend the legal opinion requirement to require that the legal opinion be obtained both when a CUSO is established and whenever the CUSO adds a new permissible activity or service that materially affects the CUSO. A legal opinion would also be required if a CUSO converts from one permissible structure, such as a limited partnership, to another permissible structure, such as a corporation. This is in addition to the requirement that separate corporate existence be maintained between the FCU and CUSO and is designed to reduce the potential liability between an FCU and its CUSO investments. In order to reduce the regulatory burden of obtaining legal

opinions, NCUA proposes that legal opinions will only be required for FCUs owning a 10% or greater equity interest in a CUSO. NCUA roughly estimates that this will reduce the number of legal opinions needed by as much as 80%. Comment is requested on the approach, and also the use of 10% as a material threshold for monitoring potential FCU liability exposure through a legal opinion requirement.

Proposed 712.5, What activities and services are preapproved for CUSOs?

Proposed paragraphs (a)–(o) of section 712.5 reorder and recategorize current sections 701.27(d)(5)(i and ii), permissible services and activities, into a more user friendly format and add services and activities deemed permissible by opinion letter since the 1986 rule revision.

Proposed Permissible Services and Activities

The first sentence of proposed section 712.5 is derived from requirements imposed by the OCC and OTS upon bank and thrift subsidiaries. 12 CFR 5.34(d)(3) and 559.1(b). OCC and OTS reserve the right to limit any bank or thrift subsidiary's activities, or to refuse to permit activities, for supervisory, legal, or safety and soundness reasons. NCUA proposes to apply these same requirements to CUSOs. NCUA sees this amendment as a clarification of existing NCUA practice. Currently, NCUA provides interpretations of the parameters of existing permissible CUSO activities through the issuance of legal opinion letters and Regional and Central Office correspondence. As the proposed amendment provides, these current NCUA pronouncements are based upon supervisory, legal, and safety and soundness grounds. The proposed amendment only puts FCUs and CUSOs on notice that NCUA does have the right to interpret the parameters of permissible CUSO services and activities. If transgressions are discovered after the fact, currently NCUA can work with the credit unions and CUSOs involved to arrive at a mutually satisfactory conclusion. In an extreme case, NCUA can order the affiliated credit union to divest its CUSO investment or dispose of its CUSO loan. NCUA may also already exercise these remedies if the normally permissible CUSO services and activities are improperly, imprudently, or recklessly conducted. Therefore, the proposed amendment adds no new powers to NCUA's supervision of affiliated credit unions' CUSO investments and loans. Comment is requested on the addition of the proposed amendment in this context.

NCUA proposes to rearrange the list of permissible activities and services for ease of understanding and citation, and to reflect changes in CUSO activities and services. Since 1986, NCUA has divided all CUSO activities into two categories: operational and financial. However, many of these services and activities are now a combination of both operational and financial services. The proposed change also reflects a return to the 1978 CUSO rule format of listing services by related categories. The proposed categories of permissible services and activities are as follows: checking and currency services; clerical, professional and management services; consumer mortgage loan origination; electronic transaction services; financial counseling services; fixed asset services; insurance brokerage or agency; leasing; loan support services; real estate brokerage services; record retention, security and disaster recovery services; securities brokerage services; shared credit union branch (service center) services; travel agency services; and trust and trust-related services. The category headings are solely descriptive in nature and not meant to convey authority for additional services and activities beyond the specific services and activities listed.

Eight new services, reflecting current NCUA interpretations of existing services, are proposed to be included in the rule revision. First, in proposed paragraph (a)(3), under checking and currency services, NCUA proposes to add ''money order, savings bonds, travelers checks, and purchase and sale of U.S. Mint commemorative coins services.'' Second, in proposed paragraph (b)(2), under clerical, professional and management services, NCUA proposes to add ''courier services.'' Third, in proposed paragraph (b)(4), also under clerical, professional and management services, NCUA proposes to add ''facsimile transmissions and copying services.'' Fourth, in proposed paragraph (b)(10), also under clerical, professional and management services, NCUA proposes to add ''supervisory committee audits.'' Fifth, in proposed paragraph (d)(5), under electronic transaction services, NCUA proposes to add ''electronic income tax filing.'' Sixth, in proposed paragraph (h)(2), under leasing, NCUA proposes to add ''real estate leasing of excess CUSO property.'' This covers real estate leasing only of premises acquired for CUSO business, and otherwise mainly used in CUSO business, that may later be used for future CUSO expansion. Although ''personal property leasing'' and ''real estate leasing of excess CUSO property'' are listed as the only two permissible leasing services in proposed paragraph (h), fixed asset leasing is also permitted, but retained with the other permissible fixed asset activities in proposed paragraph (f)(1). Seventh, in proposed paragraph (k)(2), under record retention, security, and disaster recovery services, NCUA proposes to add ''disaster recovery services.'' Eighth, in proposed paragraph (k)(3), also under record retention, security and disaster recovery services, NCUA proposes to add ''optical imaging, CD-ROM data storage and retrieval services'' to current ''microfilm and microfiche services.'' NCUA believes that these proposed amendments are self-explanatory, and only codify existing permissible services and activities not currently in the rule itself. Comment is requested on both the content and wording of these proposed amendments. In particular, NCUA would like to use terms that keep abreast of current and future technologies to provide CUSOs with operating and market flexibility in accomplishing permissible CUSO services and activities.

NCUA has also received requests to add consumer loan originations to the list of permissible activities. Historically, NCUA has been opposed to this addition. Unlike consumer mortgage loan origination, which requires a specialized lending staff, must follow strict secondary mortgage market rules, and requires economies of scale in order to be viable, consumer loans are relatively easy to offer and process. In addition, NCUA is apprehensive in granting CUSOs authority to provide consumer loans to the general public, as it may be perceived as a dilution of the common bond by Congress and the public. NCUA is also concerned that if member loans were being made by CUSOs, NCUA would have a duty to examine such loans which would lead to stricter NCUA examination authority over CUSOs. However, due to the requests to add it as an additional service, NCUA would like to request comment on adding consumer loan origination as an additional service. Comments detailing needs, benefits, and drawbacks of offering this service outside of the credit union itself are especially solicited. Comments are also solicited on whether consumer loan origination services would be helpful to small, low-income, or community development credit unions. Commenters should address whether consumer loan services should be permissible only for credit unions of

a certain asset size and how such a class should be defined.

CUSOs, according to the FCU Act, are to provide ''services which are associated with the routine operations of credit unions.'' 12 U.S.C. 1757(7)(I). In addition, CUSOs are to be ''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)(B). In providing these daily, routine services of need to credit unions, CUSOs must avoid investments in depository financial institutions, insurance companies, trade associations, liquidity facilities, and similar entities. 12 U.S.C. 1757(7)(I). In the past, NCUA has interpreted this statutory authority broadly to encompass most services and activities a credit union can provide to itself and its members through use of express authority, incidental authority, or goodwill authority. NCUA feels this interpretation is supported by the language of the FCU Act, which sets forth a clear boundary of CUSO services, namely, services fulfilling credit union and credit union member needs. Nor did Congress purport to limit CUSO activities by cross-reference to statutory FCU powers or by specifically listing CUSO powers in the statute.

With this discussion in mind, two services currently offered by CUSOs have been denied as proper incidental authorities for other financial institutions. The first is the provision of data processing services to the general public *(Nat. Retailer Corp. of Ariz.* v. *Valley Nat. Bank,* 604 F.2d 32 (9th Cir. 1979) and *Ass'n of Data Processing Service Organizations, Inc.* v. *Federal Home Loan Bank of Cincinnati,* 568 F.2d 478 (6th Cir. 1977)) and the second is the provision of travel related services (*Arnold Tours, Inc.* v. *Camp,* 408 F.2d 1147 (1st Cir. 1969) and *Assn. of Bank Travel Bureaus, Inc.* v. *Bd. of Gov. of Federal Reserve System,* 568 F.2d 549 (7th Cir. 1978)). Although NCUA in the past has permitted these two services as permissible CUSO services on a member goodwill basis, NCUA would like to request public comment, thereby creating an administrative record, on whether NCUA's position is supported by fact and justified as a proper agency interpretation. Goodwill services are those services that would normally be neither express nor incidental, but provide services to members that either cannot be conveniently obtained elsewhere or can be provided within the traditional mission of a credit union. For instance, offering vendor services through the group purchase rule could be termed a goodwill activity. By making goods and products available to members that have been reviewed and endorsed by the credit union, members are assured that the offered products and services are legitimate and helpful. Comments relating to member needs of such services would be helpful to the NCUA Board in determining whether sufficient authority exists for the Board to retain these services as permissible CUSO services. In a similar vein, although NCUA currently does permit real estate brokerage services as a permissible service, NCUA has been troubled by cases involving conflicts and the appearance of conflicts between real estate brokerage CUSOs and the credit unions such CUSOs serve. For similar reasons regarding impairment of appraiser independence and possible conflicts of interest, NCUA has declined to add real estate appraisal activities to the list of permissible activities. Comment is also requested regarding the propriety of maintaining real estate brokerage services as a permissible service in a revised rule. NCUA also requests comments regarding any aspects of any other currently allowable, or potentially allowable, CUSO activity or service.

Proposed 712.6, What activities and services are prohibited for CUSOs?

This proposed section restates the statutory prohibition of 12 U.S.C. 1757(7)(I). NCUA legal opinion letters have opined that trade association affiliates and subsidiaries are eligible to form CUSOs with FCUs; however insurance company affiliates and subsidiaries are not so eligible. NCUA bases this difference upon the composition and purpose of the trade association affiliates and subsidiaries, which derive from and benefit the credit unions themselves, as opposed to insurance companies, which are not composed of, or directly benefit, credit unions.

Proposed 712.7, What must you do to add activities or services that are not preapproved?

Current § 701.27(d)(5)(iii) regarding NCUA approval of other activities and services is unchanged in proposed section 712.7. Though it has never been used since its inclusion in 1986, the provision does provide a means for the permissible activities and services portion of the rule to keep pace with changes in the marketplace and technological advances. The terms ''NCUA Board,'' and ''Secretary of the Board,'' have the meanings ascribed to them in Part 790 of the NCUA Rules and Regulations. 12 CFR Part 790.

Proposed 712.8, What transaction and compensation limits might apply to individuals related to you or a CUSO?

Proposed section 712.8 contains conflict of interest provisions between FCUs and CUSOs.

Proposed Conflict of Interest

Section 701.27(d)(6) currently imposes restrictions between an affiliated credit union and a CUSO. The primary purposes of the conflict of interest section is to prevent insider abuse and self-dealing that could lead to losses at the CUSO, affiliated credit unions, and the NCUSIF. It is the responsibility and fiduciary duty of FCU volunteers and employees to make decisions based on the best interests of the FCU and its members. Motivations of personal financial gain from CUSO activities could present an inherent conflict of interest. Such motivations in various CUSO cases have led to personal gain by FCU officials and resulted in FCU losses, occasionally even resulting in the liquidation or merger of the FCU. In addition, CUSO compensation of FCU volunteers could serve as means to subvert the prohibitions on volunteer official compensation contained in the Act. 12 U.S.C. 1761 and 1761a. Moreover, compensation of shared CUSO/FCU officials might be a factor that a court could evaluate in deciding to pierce the corporate veil to expose an affiliated credit union to liability. For these reasons, therefore, NCUA is committed to maintaining strong conflicts of interest provisions between CUSOs and FCUs. In this vein, NCUA is proposing one change to the current language of the rule. Currently, under section 701.27(d)(6)(i), a CUSO may reimburse an FCU for the services of an FCU official or FCU senior management employee used by a CUSO. The ability of a CUSO to reimburse an FCU for the services of FCU officials in the CUSO was orginally permitted to enable newly formed CUSOs to have low cost help. It is possible that this provision might still be needed, especially in the context of smaller credit unions establishing CUSOs. As stated earlier, NCUA wants to encourage increased smaller credit union involvement with CUSO activities and services. On the other hand, NCUA is concerned that reimbursement issues could affect the corporate separateness of a CUSO and an FCU, as well as the other issues discussed in this paragraph. Therefore, NCUA is proposing the elimination of the reimbursement exemption. Comment is requested on this proposed change, especially regarding any

repercussions upon the ability of smaller credit unions in forming and maintaining CUSOs. Comments are also solicited on any other regulatory improvements that would enable NCUA to better police and contain CUSO/FCU conflicts.

The definitions of ''immediate family member,'' ''official,'' and ''senior management employee'' remain unchanged in the proposal from the current definitions in section 701.27(c)(2, 3, and 5).

Proposed 712.9, When must you begin compliance with the revised rule?

Proposed section 712.9 updates the compliance phase-in period of a final revised CUSO rule.

Proposed Preexisting CUSOs.

Other than a proposed change in the date of this section, from May 27, 1986, to the effective date of any final rule, section 701.27(d)(8) remains mostly unchanged in proposed section 712.9. NCUA has experienced one CUSO activity, ATM services, that often began as a service primarily to credit unions, but with ATM network and switch consolidations, arguably does not meet the CUSO rule ''primarily serves'' customer base requirements. In some of these situations, it is NCUA's understanding that an institution must hold stock in the ATM network or switch in order to participate in the ATM network or switch. NCUA does not want to deny credit union members ATM services due to a rule restriction. Therefore, comment is requested on how best to address this situation. Comment is also requested on whether other CUSO activities and services may also be affected by similar trends, and on possible solutions to such situations.

In 1986, when more extensive amendments were adopted, the Board granted CUSOs and FCUs a one-year phase-in period before the amendments would become effective. However, given the more limited scope of these amendments, the Board is proposing an effective date compliance date. Comments are requested on whether more time would be beneficial to CUSOs and FCUs, and, if so, what length of time should be granted by the Board as a phase-in period.

Proposed Section 740.3(c), Mandatory Requirements with Regard to the Official Sign and its Display

Federally-insured credit unions are not permitted to receive account funds at any teller's station or window where any non-federally insured credit union or institution receives shares or deposits. Credit union service centers and branches servicing more than one credit union where only some of the credit unions are insured by NCUA are exempt from this requirement. However, in a service center context a sign is required immediately above or beside each official NCUA sign stating ''Only the following credit unions serviced by the facility are federally insured by the NCUA _____.'' (the full name of each credit union insured is to follow the word NCUA). The lettering is to be of such size and print to be clearly legible to all members conducting share or deposit transactions. The intent of this requirement was to inform credit union members using a service center that share insurance was dependent upon their credit union and not upon the location of their transactions (the service center).

Since this rule was last revised in 1986, the number of states permitting state-chartered credit unions to have non-federal account insurance has shrunk. Currently, non-federally insured credit unions exist primarily in California (13), Idaho (20), Illinois (54), Indiana (21), Maryland (5), Nevada (8), Ohio (129), Puerto Rico (194), and Washington State (71). In order to reduce the paperwork and compliance burdens on service centers, which service mainly federally-insured credit unions, NCUA is proposing to change this disclosure requirement. The proposal only requires disclosure of *non*-federally insured credit unions serviced at a service center. Since there are an estimated 515 non-federally insured credit unions compared to 11,687 federally-insured credit unions, by reversing the disclosure requirement many service centers should experience a compliance and paperwork burden reduction. This disclosure would also accomplish the intent of the current disclosure of informing the credit union members of whether NCUSIF insurance exists on their credit union accounts. While NCUA is aware of the statutorily-mandated disclosures that nonfederally insured credit unions must give to their members (12 U.S.C. 1831t), NCUA is concerned that some member confusion might still exist which might lead the member of a nonfederally insured credit union to believe that his or her deposits were federally insured by the NCUSIF. NCUA requests comments on the need and adequacy of this proposed change.

II. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare any analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under $1 million in assets). The proposed CUSO and service contract rule revisions would reduce existing regulatory burdens. The advertising amendment also reduces existing regulatory burden. Therefore, the NCUA Board has determined and certifies that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

B. Paperwork Reduction Act

NCUA has determined that several requirements of this proposal constitute collections of information under the Paperwork Reduction Act. The requirements are that the FCU: (1) Obtain a written agreement from the CUSO, prior to investing in or lending to the organization, that the CUSO will follow GAAP, render financial statements (balance sheet and income statement) at least quarterly and obtain a Certified Public Accountant opinion audit annually and provide copies of such to the FCU, and provide NCUA and its representatives with complete access to any books and records of the CUSO as deemed necessary by NCUA in carrying out its responsibilities under the Act (proposed section 712.3(d)); (2) obtain written legal advice if the FCU's equity interest in a CUSO is greater than 10 percent as to whether the CUSO is established and maintained in a manner that will limit potential exposure to no more than the loss of funds invested in, or lent to, the CUSO (proposed section 712.4(b)); and (3) compose a list of non-federally insured credit unions by a service center and post the list by the official NCUA sign (proposed section 740.3(c)). NCUA has submitted a copy of these proposed sections to the Office of Management and Budget (OMB) for its review. These proposed sections enable NCUA to monitor an FCU's involvement with CUSOs for safety and soundness and to ensure that CUSOs are properly formed and maintained in accordance with applicable state laws.

It is NCUA's view that the time a CUSO spends ensuring compliance with GAAP, compiling quarterly financial statements, and providing NCUA and its representatives with complete access to any books and records of the CUSO are not burdens created by this regulation, but rather are usual and customary practices in the normal operations of a business entity. It is also NCUA's view that the written agreement between the CUSO and the FCU is not a burden created by this regulation, but is usual and customary practice in the normal

operations of a business entity. The paperwork burdens created by these rules are the remaining requirements outlined above.

NCUA estimates that it should take the CUSO an average of 2 hours to research and contract to have a Certified Public Accountant opinion audit each year. Since this requirement applies to all 448 CUSOs, the annual reporting burden would be 896 hours to comply with this requirement. It is expected that it would take 15 minutes for each of the 448 CUSOs to provide copies of the audit to NCUA, resulting in an annual reporting burden of 112 hours. NCUA estimates that 482 FCUs would have to research and obtain written legal advice on the CUSO investment, an activity that is expected to take 1 hour per year, imposing annual reporting burden of 482 hours. Each of the 282 service center locations would need to compose and post a list of the non-federally insured credit unions serviced by that location. The estimated time to perform this at each location is estimated to be 0.5 hour for each, resulting in an annual reporting burden of 141 hours. The total annual burden hours imposed by the proposed rule is 1631 hours.

The Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget (OMB) require that the public be provided an opportunity to comment on information collection requirements, including an agency's estimate of the burden of the collection of information.

The NCUA Board invites comment on: (1) Whether the collection of the information is necessary for the proper performance of the functions of NCUA, including whether the information will have practical utility; (2) the accuracy of NCUA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the NCUA Board on the proposed regulations.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Alex Hunt, Desk Officer for NCUA. Comments must also be sent to NCUA, 1775 Duke Street, Alexandria, VA 22314–3428; Attention: Marijean Brown, Acting Paperwork Reduction Act Coordinator, Telephone No. (703) 518–6410; Fax No. (703) 518–6433; E-Mail Address: MARIJEAN@NCUA.GOV. Comments should be postmarked by May 12, 1997. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, at NCUA's Central Office, 6th Floor, Law Library, 1775 Duke Street, Alexandria, VA between the hours of 9 a.m. and 1 p.m., Monday through Friday of each week except federal holidays, and by appointment through the Law Librarian at telephone no. (703) 518–6540.

C. Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed CUSO regulation applies only to federal credit unions. The proposed advertising rule amendment would apply to all federally insured credit unions, including federally insured, state-chartered credit unions. However, due to the relatively low number of credit union service centers that serve non-federally insured credit unions, NCUA has determined that the proposed rule does not constitute a ''significant regulatory action'' for purposes of the Executive Order. However, NCUA welcomes comment on means and methods to coordinate with the state credit union supervisors regarding achievement of shared goals involving viability, flexibility, parity, conformity and safety and soundness regarding CUSOs and service center advertising of accounts.

List of Subjects

12 CFR Part 701

Advertising, Aged, Civil rights, Credit, Credit unions, Fair housing, Individuals with disabilities, Insurance, Marital status discrimination, Mortgages, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination, Signs and symbols, Surety bonds.

12 CFR Part 712

Administrative practice and procedure, Credit, Credit unions, Investments, Reporting and recordkeeping requirements.

12 CFR Part 740

Advertising, Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements, Signs and symbols.

By the National Credit Union Administration Board on March 7, 1997.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, it is proposed that 12 CFR chapter VII be amended as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

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

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, 1798. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1861 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

§ 701.26 [Amended]

2. Section 701.26 is amended by removing paragraph (b) and removing the paragraph designation (a).

§ 701.27 [Removed]

3. Section 701.27 is removed.

4. Part 712 is added to read as follows:

PART 712—CREDIT UNION SERVICE ORGANIZATIONS (CUSOs)

Sec.

Authority: 12 U.S.C. 1756, 1757(5)(D) and (7)(I), 1766, 1782, 1784, and 1785.

§ 712.1 What does this part cover?

This part establishes when you, an affiliated Federal credit union, can

invest in, and make loans to, CUSOs. This part does not regulate CUSOs directly, but rather establishes conditions of your investments in, and loans to, CUSOs. For purposes of this part, ''affiliated credit unions'' means those Federal credit unions that have either invested in, made loans to, or contracted with, a CUSO.

§ 712.2 How much can you invest in, or loan to, CUSOs, and what parties may be involved?

(a) *Investments.* Your total investments in CUSOs must not exceed, in the aggregate, 1% of your paid-in and unimpaired capital and surplus as of your last calendar year-end financial report. For purposes of paragraphs (a) and (b) of this section, ''paid-in and unimpaired capital and surplus'' means shares and undivided earnings.

(b) *Loans.* Your total loans to CUSOs must not exceed, in the aggregate, 1% of your paid-in and unimpaired capital and surplus as of your last calendar year-end financial report.

(c) *Parties.* You may invest in, or loan to, a CUSO by yourself, or with other credit unions or with non-credit union parties.

§ 712.3 What are the characteristics of, and what requirements apply to, CUSOs?

(a) *Structure.* You can invest in or loan to a CUSO only if the CUSO is structured as a corporation, limited liability company, or limited partnership. For purposes of this paragraph (a), ''corporation'' means a legally incorporated corporation as established and maintained under relevant state law. For purposes of this paragraph (a), ''limited liability company'' means a legally established limited liability company as established and maintained under relevant state law. For purposes of this paragraph (a), ''limited partnership'' means a legally established limited partnership as established and maintained under relevant state law.

(b) *Customer base.* You can invest in or loan to a CUSO only if the CUSO primarily serves credit unions, your membership or the membership of affiliated credit unions.

(c) *Federal credit union accounting.* You must record your investments in or loans to CUSOs in accord with ''generally accepted accounting principles'' (GAAP).

(d) *CUSO accounting; audits and financial statements; NCUA access to books and records.* You must obtain written agreements from a CUSO, prior to investing in or lending to the organization, that the CUSO will:

(1) Follow GAAP;

(2) Render financial statements (balance sheet and income statement) at least quarterly and obtain a Certified Public Accountant opinion audit annually and provide copies of such to you; and

(3) Provide NCUA and its representatives with complete access to any books and records of the CUSO, as deemed necessary by NCUA in carrying out its responsibilities under the Act.

(e) *Other laws.* A CUSO must comply with applicable Federal, state and local laws.

§ 712.4 What must you and a CUSO do to maintain separate corporate identities?

(a) *Corporate separateness.* You and the CUSO must be operated in a manner that demonstrates to the public the separate corporate existence of you and the CUSO. Each must operate so that:

(1) Its respective business transactions, accounts, and records are not intermingled;

(2) Each observes the formalities of its separate corporate procedures;

(3) Each is adequately financed as a separate unit in the light of normal obligations reasonably foreseeable in a business of its size and character;

(4) Each is held out to the public as a separate enterprise;

(5) You do not dominate the CUSO to the extent that the CUSO is treated as a department of you; and

(6) Unless you have guaranteed a loan obtained by the CUSO, all borrowings by theCUSO indicate that you are not liable.

(b) *Legal opinion.* If you have a 10% or greater equity interest in a CUSO, you must obtain written legal advice as to whether the CUSO is established and maintained in a manner that will limit your potential exposure to no more than the loss of funds invested in, or lent to, the CUSO.

§ 712.5 What activities and services are preapproved for CUSOs?

NCUA at any time may limit any CUSO activities or services, or refuse to permit any CUSO activities or services, for supervisory, legal, or safety and soundness reasons. Otherwise, you may invest in, loan to, and/or contract with those CUSOs that provide one or more of the following activities and services related to the routine, daily operations of credit unions:

(a) Checking and currency services:

(1) Check cashing;

(2) Coin and currency services; and

(3) Money order, savings bonds, travelers checks, and purchase and sale of U.S. Mint commemorative coins services;

(b) Clerical, professional and management services:

(1) Accounting services;

(2) Courier services;

(3) Credit analysis;

(4) Facsimile transmissions and copying services;

(5) Internal audit for credit unions;

(6) Locator services;

(7) Management and personnel training and support;

(8) Marketing services;

(9) Research services; and

(10) Supervisory committee audits;

(c) Consumer mortgage loan origination;

(d) Electronic transaction services:

(1) Automated teller machine (ATM) services;

(2) Credit card and debit card services;

(3) Data processing;

(4) Electronic fund transfer (EFT) services;

(5) Electronic income tax filing;

(6) Payment item processing; and

(7) Wire transfer services;

(e) Financial counseling services:

(1) Developing and administering Individual Retirement Accounts (IRA), Keogh, deferred compensation and other personnel benefit plans;

(2) Estate planning;

(3) Financial planning and counseling;

(4) Income tax preparation;

(5) Investment counseling; and

(6) Retirement counseling;

(f) Fixed asset services:

(1) Management, development, sale or lease of fixed assets; and

(2) Sale, lease or servicing of computer hardware or software;

(g) Insurance brokerage or agency:

(1) Agency for sale of insurance; and

(2) Provision of vehicle warranty programs;

(h) Leasing:

(1) Personal property; and

(2) Real estate leasing of excess CUSO property;

(i) Loan support services:

(1) Debt collection services;

(2) Loan processing, servicing and sales; and

(3) Sale of repossessed collateral;

(j) Real estate brokerage services;

(k) Record retention, security and disaster recovery services:

(1) Alarm-monitoring and other security services;

(2) Disaster recovery services;

(3) Microfilm, microfiche, optical imaging, CD-ROM data storage and retrieval services;

(4) Provision of forms and supplies; and

(5) Record retention and storage;

(l) Securities brokerage services;

(m) Shared credit union branch (service center) operations;

(n) Travel agency services; and
(o) Trust and trust-related services:
(1) Acting as administrator for prepaid legal service plans;
(2) Acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity; and
(3) Trust services.

§ 712.6 What activities and services are prohibited for CUSOs?

CUSOs must not engage in the activities or services of depository financial institutions, insurance companies, trade associations, liquidity facilities, and similar entities.

§ 712.7 What must you do to add activities or services that are not preapproved?

In order for you to invest in and/or loan to a CUSO that offers the unpreapproved activity or service, you must first receive NCUA Board approval. Your request for NCUA Board approval of a new activity or service should include a full explanation and complete documentation of the activity or service and how that activity or service is associated with routine credit union operations. Your request should be submitted jointly to your Regional Office and to the Secretary of the Board. Your request will be treated as a petition to amend § 712.5 and NCUA will request public comment or otherwise act on the petition within 60 days after receipt.

§ 712.8 What transaction and compensation limits might apply to individuals related to you or a CUSO?

(a) *Officials and senior management employees.* Your officials, senior management employees, and their immediate family members must not receive 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. This provision does not prohibit your officials or senior management employees from assisting in the operation of a CUSO, provided your officials or senior management employees are not compensated by the CUSO. For purposes of this paragraph (a), ''official'' means your directors or committee members. For purposes of this paragraph (a), ''senior management employee'' means your 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). For purposes of this paragraph (a), ''immediate family member'' means a spouse or other family members living in the same household.

(b) *Employees.* The prohibition contained in paragraph (a) of this section also applies to your employees not otherwise covered if the employees are directly involved in dealing with the CUSO unless your board of directors determines that your employees' positions do not present a conflict of interest.

(c) *Others.* All transactions with business associates or family members of your officials, senior management employees, and their immediate family members, not specifically prohibited by paragraphs (a) and (b) of this section must be conducted at arm's length and in your interest.

§ 712.9 When must you begin compliance with this part?

(a) *Investments.* Your investments in existence prior to [the effective date of the final regulation], must conform with this part not later than [the effective date of the final regulation], unless the Board grants its prior approval to continue such investment for a stated period.

(b) *Loans.* Your loans in existence prior to [the effective date of the final regulation] must conform with this part not later than [the effective date of the final regulation], unless:

(1) The Board grants its prior approval to continue your loan for a stated period; or

(2) Under the terms of its loan agreement you cannot require accelerated repayment without breaching the agreement.

PART 740—ADVERTISING

5. The authority citation for Part 740 continues to read as follows:

Authority: 12 U.S.C. 1766, 1781, 1789 and 4311.

6. Section 740.3(c) is revised to read as follows:

§ 740.3 Mandatory requirements with regard to the official sign and its display.

* * * * *

(c) An insured credit union shall not receive account funds at any teller's station or window where any noninsured credit union or institution receives deposits. Excepted from this prohibition are credit union centers, service centers, or branches servicing more than one credit union where only some of the credit unions are insured by the NCUA. In such instances there must be placed immediately above or beside each official sign another sign stating ''The following credit unions serviced by this facility are not federally insured by the NCUA _____.'' (the full legal name of each credit union and the city and state of its principal office will follow the word NCUA each time it appears). The lettering will be of such size and print to be clearly legible to all members conducting share or share deposit transactions.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 243

[Docket No. OST–97–2198, Notice No. 97–4]

RIN 2105–AC62

Domestic Passenger Manifest Information

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: This ANPRM requests information concerning operational and cost issues related to U.S. air carriers collecting basic information (e.g., full name, date of birth and/or social security number, emergency contact and telephone number) from passengers traveling on flights within the United States. This proposal is being issued pursuant to the Aviation Disaster Family Assistance Act of 1996. This law was passed to address the difficulties associated with notification of families in the aftermath of domestic aviation crashes. This proposal is also being issued to fulfill a recommendation contained in the Initial and Final Reports of the White House Commission on Aviation Safety and Security that urges the Department to explore the costs and effects of a comprehensive passenger manifest requirement on the domestic aviation system.

DATES: Comments must be received by May 12, 1997.

ADDRESSES: Comments on this advance notice of proposed rulemaking should be filed with: Docket Clerk, U.S. Department of Transportation, Room PL–401, Docket No. OST–97–2198, 400 7th Street, SW., Washington, DC 20590. Five copies are requested, but not required.

FOR FURTHER INFORMATION CONTACT: Dennis Marvich, Office of International Transportation and Trade, DOT, (202) 366–4398; or, for legal questions, Joanne