

(ii) Real estate loans purchased in accordance with paragraph (b)(1)(iv) of this section;

(iii) Eligible obligations purchased in accordance with paragraph (b)(1)(i) of this section that are refinanced by the purchaser so that it is a loan it is empowered to grant; and

(iv) An indirect lending or indirect leasing arrangement that is classified as a loan and not the purchase of an eligible obligation because the federal credit union makes the final underwriting decision and the sales or lease contract is assigned to the federal credit union very soon after it is signed by the member and the dealer or leasing company.

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[FR Doc. 98-20952 Filed 8-5-98; 8:45 am]

BILLING CODE 7535-01-P

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 701

#### Organization and Operations of Federal Credit Unions

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The NCUA is proposing to incorporate into its regulations the agency's longstanding interpretation that federal credit unions can permit a nonmember to assume a member's long-term residential real estate loan in conjunction with the nonmember's purchase of the member's principal residence.

**DATES:** Comments must be received on or before October 5, 1998.

**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. Fax comments to (703) 518-6319. *Please send comments by one method only.*

**FOR FURTHER INFORMATION CONTACT:** Michael J. McKenna, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518-6540.

**SUPPLEMENTARY INFORMATION:** Since 1977, federal credit unions have had the authority to offer long-term real estate loans to finance a member's principal residence. 12 U.S.C. 1757(A)(i). NCUA's implementing regulation for this authority is set forth at 12 CFR 701.21(g).

In 1985, the NCUA Board issued Interpretive Ruling and Policy

Statement 85-3 (IRPS 85-3). 50 FR 51840 (December 20, 1985). IRPS 85-3 stated that, incidental to a federal credit union's authority to make long-term real estate loans to members, a federal credit union may permit assumptions, by either members or nonmembers, under the terms and conditions specified in the loan agreement and consistent with the Federal Credit Union Act and NCUA's Regulations. The Board also stated that, in the case of a nonmember assumption, there must be no new money lent to the borrower and no extension of the original maturity date specified in the loan agreement with the member.

NCUA has a policy of periodically reviewing its regulations to "update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions." IRPS 87-2, Developing and Reviewing Government Regulations. As part of its regulatory review program, NCUA reviewed its IRPS to determine their current effectiveness. As a result of that review, the NCUA Board stated that it planned to incorporate IRPS 85-3 into NCUA's Regulations. 62 FR 11773 (March 13, 1997) and 62 FR 50245 (September 25, 1997). The Board's goal is to increase regulatory effectiveness by making it easier for credit unions to locate applicable rules regarding real estate lending. Accordingly, the Board is proposing to add a new paragraph to Section 701.21(g) that will incorporate IRPS 85-3 so that this provision on nonmember assumption of loans will be in the same place with the other regulatory provisions regarding real estate lending. Although the language is slightly different, the policy set forth in the proposed amendment is, for all practical purposes, identical to the policy set forth in IRPS 85-3.

This proposal does not authorize a refinancing by a nonmember. Further, this proposal, just as IRPS 85-3, does not permit a federal credit union to grant an assumption of a loan to a nonmember if the underlying intent of the original loan to the member was to grant an assumption by a nonmember immediately or soon after making the original loan. NCUA would view such a transaction as a sham and will not permit federal credit unions to circumvent the restriction on lending to nonmembers. NCUA will review assumptions by nonmembers during the examination process. Federal credit unions engaging in such sham transactions will be subject to NCUA's administrative enforcement process.

This proposal does not require a federal credit union to permit nonmember assumption of real estate

loans. A federal credit union's loan agreements can provide that a loan is immediately due and payable if the member's residence securing the loan is sold.

## Regulatory Procedures

### Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an 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 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.

### Paperwork Reduction Act

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

### Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposal only applies to federal credit unions. NCUA has determined that the proposed amendment does not constitute a significant regulatory action for the purposes of the Executive Order.

## List of Subjects in 12 CFR Part 701

Credit, Credit unions, Insurance, Mortgages, Reporting and recordkeeping requirements, Surety bonds.

By the National Credit Union Administration Board on July 30, 1998.

**Becky Baker,**  
*Secretary of the Board.*

For the reasons set forth in the preamble, it is proposed that 12 CFR Part 701 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, and 1789. 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 42 U.S.C. 3601-3610. Section 701.35 is also authorized by 42 U.S.C. 4311-4312.

2. Section 701.21 is amended by adding a new paragraph (g)(7) to read as follows:

**§ 701.21(g) Loans to members and lines of credit to members.**

\* \* \* \* \*

(g) \* \* \*

(7) *Assumption of real estate loans by nonmembers.* A federal credit union may permit a nonmember to assume a member's mortgage loan in conjunction with the nonmember's purchase of the member's principal residence, provided that the nonmember assumes only the remaining unpaid balance of the loan, the terms of the loan remain unchanged, and there is no extension of the original maturity date specified in the loan agreement with the member. An assumption is impermissible if the original loan was made with the intent of having a nonmember assume the loan.

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[FR Doc. 98-20951 Filed 8-5-98; 8:45 am]

BILLING CODE 7535-01-U

## DEPARTMENT OF COMMERCE

### Bureau of the Census

#### 15 CFR Part 30

[Docket No. 980716108-8108-01]

RIN 0607-AA20

#### Amendment to Foreign Trade Statistics Regulations To Clarify Exporters' and Forwarding Agents' Responsibilities and To Clarify Provisions for Executing a Power of Attorney

**AGENCY:** Bureau of the Census, Commerce.

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** The Bureau of the Census (Census Bureau) proposes amending the Foreign Trade Statistics Regulations (FTSR), 15 CFR Part 30, to clarify exporters' and forwarding agents' responsibilities for providing and reporting information on the Shipper's Export Declaration (SED), and to clarify the provisions for executing a power of attorney when exporters authorize forwarding agents to perform services regarding the export of merchandise out of the United States. This proposed rule will further clarify the provisions for executing a power of attorney when the principal party is transmitting SED information electronically. The Census Bureau also proposes requiring that the SED be prepared in English.

The proposed revisions are consistent with the Bureau of Export

Administration's Export Administration Regulations (EAR) regarding export control responsibilities of exporters and forwarding agents. The Department of Treasury concurs with the provisions contained in this proposed rule.

**DATES:** Written comments must be submitted on or before October 5, 1998.

**ADDRESSES:** Direct all written comments on this proposed rulemaking to the Director, Bureau of the Census, Room 2049, Federal Building 3, Washington, D.C. 20233.

**FOR FURTHER INFORMATION CONTACT:** C. Harvey Monk, Jr., Chief, Foreign Trade Division, Bureau of the Census, Room 2104, Federal Building 3, Washington, D.C. 20233-6700, by telephone on (301) 457-2255 or by fax on (301) 457-2645.

#### SUPPLEMENTARY INFORMATION:

##### Background

In response to requests from various members of the trade community, the Census Bureau proposes amending 15 CFR Part 30 to clarify the responsibilities of exporters and forwarding agents for preparing and submitting SEDs and to clarify the provisions for obtaining and executing a power of attorney.

For purposes of this proposed rule, the exporter is defined as any person in the United States; any firm; government agency, department, or commission; and any other association or organization, whether or not organized for profit, organized under the laws of the United States, or any jurisdiction within the United States, who is also the principal party in interest in the export transaction. Generally, the exporter is the U.S. manufacturer, seller, order party, or licensee on an export license. A forwarding agent may act as exporter, but only when it is the "applicant" and "licensee" on an export license. A foreign principal, not located in the United States at the time of export, must not be designated as exporter on the SED. If a U.S. manufacturer sells merchandise for export to a foreign company (including Ex Works), the U.S. manufacturer must be listed as exporter on the SED. If a U.S. manufacturer sells merchandise to a U.S. seller (wholesaler/distributor), and the U.S. seller sells the merchandise for export to a foreign company (including Ex Works), the U.S. seller must be listed as exporter on the SED. If a U.S. manufacturer or seller sells merchandise to a U.S. order party and the U.S. order party arranges for the sale and export of the merchandise to a foreign company (including Ex Works), the U.S. order party must be listed as exporter on the SED.

The U.S. manufacturer, seller, or order party, that is, the principal party in interest in the export transaction, may authorize its own forwarding agent to facilitate the export transaction or may authorize the forwarding agent designated by the foreign company. In either case, the U.S. manufacturer, seller, or order party must authorize the forwarding agent to act on its behalf in completing and filing the SED in a power of attorney or a written authorization to execute the SED, or sign the authorization printed on the SED. When a U.S. manufacturer, seller, or order party authorizes a forwarding agent to facilitate the export transaction, the manufacturer, seller, or order party, that is, whoever sold the merchandise to the foreign company, must be listed as the exporter on the SED, unless the forwarding agent is the applicant and licensee on an export license.

The forwarding agent is any person in the United States; any firm; government agency, department or commission; and any other association or organization, whether or not organized for profit, organized under the laws of the United States, or any jurisdiction within the United States, who is authorized by the U.S. principal party in interest in the export transaction to perform the services required to facilitate the export of the merchandise out of the United States. The principal party must authorize a forwarding agent to act on its behalf in completing and filing the SED in a power of attorney or a written authorization to execute the SED, or sign the authorization printed on the SED. The principal party also must provide the forwarding agent with the information necessary to correctly prepare the SED in accordance with the requirements specified in FTSR § 30.7.

The FTSR places ultimate responsibility for the export transaction on the exporter. However, the FTSR also considers all parties to the export transaction, including U.S. and foreign principals and forwarding agents responsible for providing information necessary to complete the SED, and for the accuracy of the information reported on the SED. If a forwarding agent's principal does not possess the necessary information, the forwarding agent may request that other parties to the export transaction provide that information. The parties to the transaction must provide the forwarding agent with the necessary information to correctly prepare the SED. Necessary and proper documentation must be maintained by all parties involved in the export transaction to support information reported on the SED.