

**Executive Order 12612**

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final rule, just as the current rule, applies to all federally insured credit unions, including federally insured state-chartered credit unions. However, since the rule reduces regulatory burdens, NCUA has determined that it does not constitute a "significant regulatory action" for purposes of the Executive Order.

**Small Business Regulatory Enforcement Fairness Act**

The Office of Management and Budget is reviewing this rule to determine that it is not major for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

**List of Subjects in 12 CFR Part 711**

Antitrust, Credit unions, Holding companies, Management official interlocks.

By the National Credit Union Administration Board on November 18, 1999.

**Becky Baker,**

*Secretary of the Board.*

For the reasons set out in the preamble, the NCUA amends 12 CFR part 711 as follows:

**PART 711—MANAGEMENT OFFICIAL INTERLOCKS**

1. The authority citation for Part 711 continues to read as follows:

**Authority:** 12 U.S.C. 3201–3208.

**§ 711.2 [Amended]**

1. Section 711.2 is amended by removing paragraphs (b) and (f) and redesignating paragraphs (c) through (s) as paragraphs (b) through (q), respectively.

2. Section 711.3 is amended by revising paragraph (c) to read as follows:

**§ 711.3 Prohibitions.**

\* \* \* \* \*

(c) *Major Assets.* A management official of a depository organization with total assets exceeding \$2.5 billion (or any affiliate thereof) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding \$1.5 billion (or any affiliate thereof), regardless of the location of the two depository organizations. The NCUA will adjust these thresholds, as necessary, based on year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest

\$100 million. The NCUA will announce the revised thresholds by publishing a notice in the **Federal Register**.

3. Section 711.5 is revised to read as follows:

**§ 711.5 Small market share exemption.**

(a) *Exemption.* A management interlock that is prohibited by § 711.3(a) or § 711.3(b) is permissible, provided:

(1) The interlock is not prohibited by § 711.3(c); and

(2) The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20% of the deposits, in each RMSA or community in which the depository organizations (or their depository institution affiliates) are located. The amount of deposits will be determined by reference to the most recent annual Summary of Deposits published by the FDIC. This information is available on the Internet at <http://www.fdic.gov>.

(b) *Confirmation and records.* Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must reconfirm that determination on an annual basis.

4. Section 711.6 is revised to read as follows:

**§ 711.6 General exemption.**

(a) *Exemption.* NCUA may, by agency order issued following receipt of an application, exempt an interlock from the prohibitions in § 711.3, if NCUA finds that the interlock would not result in a monopoly or substantial lessening of competition, and would not present other safety and soundness concerns.

(b) *Presumptions.* In reviewing applications for an exemption under this section, NCUA will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official:

(1) Primarily serves, low- and moderate-income areas;

(2) Is controlled or managed by persons who are members of a minority group or women;

(3) Is a depository institution that has been chartered for less than two years; or

(4) Is deemed to be in "troubled condition" as defined in § 701.14(b)(3) of this chapter.

(c) *Duration.* Unless a shorter expiration period is provided in the NCUA approval, an exemption permitted by paragraph (a) of this section may continue so long as it would not result in a monopoly or substantial lessening of competition, or

be unsafe or unsound. If the NCUA grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided in the approval.

5. Section 711.7 is amended by revising paragraph (a) to read as follows:

**§ 711.7 Change in circumstances.**

(a) *Termination.* A management official shall terminate his or her service if a change in circumstances causes the service to become prohibited. A change in circumstances may include, but is not limited to, an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

\* \* \* \* \*

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**NATIONAL CREDIT UNION ADMINISTRATION****12 CFR Part 712****Credit Union Service Organizations**

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

**ACTION:** Final rule.

**SUMMARY:** The final rule reinstates real estate brokerage services as a permissible credit union service organization (CUSO) service. Because the existing real estate brokerage CUSOs do not appear to present a safety and soundness risk and the commenters have stated persuasively that there are sufficient safeguards in place to deal with any potential conflicts, the Board is reinstating real estate brokerage services as permissible CUSO service.

**DATES:** This rule is effective December 27, 1999.

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

**SUPPLEMENTARY INFORMATION:****Background**

In March 1998, the NCUA Board removed real estate brokerage services from the list of permissible CUSO services. 12 CFR 712.6(b). On November 19, 1998, the NCUA Board requested

comment on proposed changes to part 712 of its regulations. 63 FR 65714 (November 30, 1998). Although the Board did not request comment on the issue of real estate brokerage services, eight commenters objected to its removal. Based on the comments, the NCUA Board issued an interim final rule that provided a grandfather exemption for real estate brokerage services if a CUSO was providing that service prior to April 1, 1998. 64 FR 33187 (June 22, 1999). The interim final rule also requested comment on that exemption and whether real estate brokerage services should be reinstated as a permissible activity.

#### Summary of Comments

The NCUA Board received sixteen comments on the interim final rule: ten from credit unions; two from credit union trade associations; two from state leagues; one from a CUSO trade; and one from a bank trade association. Fifteen of the sixteen commenters were in favor of reinstating real estate brokerage service as a permissible service.

The only negative commenter was a bank trade group. That commenter stated that allowing a CUSO into the "real estate service arena" results in unfair competition because of credit unions' tax advantages.

Some of the reasons stated throughout the comment letters in support of reinstating the service were: there is no evidence that the service presents a safety and soundness risk; if a safety and soundness concern arises with respect to a particular CUSO, NCUA has within its supervisory power the authority to require a credit union to divest itself of the investment; the real estate brokerage services of a CUSO are monitored by state licensing authorities; the CUSO must comply with the code of ethics and standards of practice imposed by the National Association of Realtors; and the service is an important member service because it provides a convenience and possible savings to the member.

Twelve of the fourteen commenters that commented on the grandfather provision were in favor of it. The two negative commenters were the bank trade group discussed above and a credit union trade group. The credit union trade group wants the grandfather exemption eliminated because "real estate brokerage should be reinstated as a permissible activity for all CUSOs."

#### Final Rule

The Board continues to have concerns with conflicts and the appearance of conflicts between real estate brokerage

CUSOs and the credit unions such CUSOs serve. However, because the existing real estate brokerage CUSOs do not appear to present a safety and soundness risk and the commenters have stated persuasively that there are sufficient safeguards in place to deal with any potential conflicts, the Board is reinstating real estate brokerage services as a permissible CUSO service. This final rule eliminates the grandfather exemption and amends § 712.5 so that CUSOs may again engage in real estate brokerage services.

Section 712.5 allows the Board to limit or discontinue a CUSO service if it has supervisory, legal, or safety and soundness concerns. The Board cautions that, if a conflict between the real estate brokerage CUSO and the FCU's loan program arises, the Board may order the FCU to divest its investment in the real estate brokerage CUSO.

#### 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 this rule will not have a significant economic impact on a substantial number of small credit unions. The reason for this determination is that the amendment to the rule reduces regulatory burden. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

##### *Paperwork Reduction Act*

This interim rule has no effect on reporting requirements in part 712.

##### *Executive Order 12612*

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The CUSO regulation applies only to FCUs. Thus, the NCUA Board has determined that this interim rule does not constitute a "significant regulatory action" for purposes of the Executive Order. NCUA will continue to work with the state credit union supervisors to achieve shared goals concerning CUSOs with both FCU and state-chartered credit union participation.

##### *Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) provides generally for congressional review of agency rules. A

reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act, 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and determined that, for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, this is not a major rule.

#### List of Subjects in 12 CFR Part 712

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

By the National Credit Union Administration Board on November 18, 1999.

**Becky Baker,**

*Secretary of the Board.*

For the reasons stated in the preamble, the NCUA amends part 712 as follows:

#### **PART 712—CREDIT UNION SERVICE ORGANIZATIONS**

1. The authority citation for part 712 will continue to read as follows:

**Authority:** 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786.

2. In § 712.5, redesignate paragraph (p) as paragraph (q) and add a new paragraph (p) to read as follows:

##### **§ 712.5 What activities and services are preapproved for CUSOs?**

\* \* \* \* \*

(p) *Real estate brokerage services.*

\* \* \* \* \*

##### **§ 712.6 [Amended]**

3. In § 712.6, remove the designation from paragraph (a), and remove paragraph (b).

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#### **DEPARTMENT OF TRANSPORTATION**

##### **Federal Aviation Administration**

##### **14 CFR Part 39**

[Docket No. 99-NM-18-AD; Amendment 39-11430; AD 99-24-06]

RIN 2120-AA64

**Airworthiness Directives; Boeing Model 737-100, -200, -300, -400, and -500 Series Airplanes; and Model 727-100 and -200 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.