

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 741

#### Requirements for Insurance

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

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** NCUA is soliciting public comment on whether NCUA should insure state-chartered credit unions that branch outside the United States and, if so, to what extent NCUA should regulate that activity. Information from interested parties will assist NCUA in determining whether to issue a proposed rule.

**DATES:** The NCUA must receive comments on or before November 13, 2000.

**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, or you may fax comments to (703) 518-6319. Please send comments by one method only.

**FOR FURTHER INFORMATION CONTACT:**

Michael J. McKenna, Senior Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518-6540 or Lynn McLaughlin, Program Officer, Office of Examination and Insurance, at the above address or telephone: (703) 518-6360.

**SUPPLEMENTARY INFORMATION:** This advanced notice of proposed rulemaking addresses the safety and soundness implications of state-chartered credit unions branching outside the United States, when authorized by state statute, to serve members and member groups, including foreign nationals, outside the United States. The key issues raised in this document include NCUA Board policy considerations, legal issues, supervision and examination considerations, options for insuring foreign branches of

state-chartered credit unions and options for restricting insurance coverage for state-chartered credit unions operating foreign branches. The NCUA Board is also interested in receiving comment from federal credit unions and state-chartered credit unions that cannot or do not intend to branch overseas concerning the implications of the National Credit Union Share Insurance Fund (NCUSIF) covering any potential insurance losses by credit unions engaged in this activity.

#### A. Background

NCUA allows a federal credit union (FCU) to serve foreign nationals within its field of membership wherever they reside provided the FCU has the requisite ability, resources, and management expertise. NCUA regulations, however, impose restrictions on this activity as described below.

An FCU can serve foreign nationals outside of the United States only if it has submitted a business plan to its NCUA Regional Office and received written approval from the regional director. Regional directors have the authority to limit the types of services offered to foreign nationals residing overseas if safety and soundness concerns exist. FCUs are permitted to establish service facilities (branches) outside the United States only if the facility is located on a United States military installation or at a United States embassy. In those cases, the credit unions are considered to be on United States territory and, therefore, subject to United States laws and NCUA's regulatory authority. NCUA Board policy prohibits the establishment of an FCU branch for the primary purpose of serving citizens of a foreign nation. (See NCUA's Chartering and Field of Membership Manual, Chapter 1, Section XII.)

While the FCU Act and NCUA's rule limit FCUs in serving foreign nationals, they do not limit state-chartered credit unions, which may have broader authority to serve foreign nationals under state law. It is NCUA's understanding that some states either permit foreign branching for state chartered credit unions or are considering legislation to provide this authority. While actual foreign branching is not prevalent at this time, it is appropriate to address regulatory

and supervisory concerns before the practice becomes widespread.

#### B. Legal Issues; Federal Reserve Act Requirements for Foreign Accounts and Federal Deposit Insurance Requirements

If NCUA insures member accounts in foreign branches, there will be a number of legal issues to be addressed. A credit union operating in a foreign country is under the jurisdiction of the host country's laws. Those laws may conflict with the Federal Credit Union Act and NCUA's Rules and Regulations. There is also a question of whether NCUA could adequately exercise its liquidation powers when placing a credit union into conservatorship or liquidation based upon the unique nature of a host country's laws.

The Federal Reserve Board's Regulation K sets forth many of the requirements for U.S. banks operating overseas. 12 CFR 211. They include:

- Foreign branches of U.S. banking organizations must have at least \$1 million in capital and surplus.
- Additional appropriated reserves may be required depending on risk.
- There are limits on lending as a percentage of capital.

• The establishment of a foreign branch requires the prior approval of the Federal Reserve Board.

The Federal Deposit Insurance Corporation reviews the insurance application for each branch located outside the United States. When reviewing an insurance application for foreign banks or foreign branches, FDIC must consider:

- (1) The financial history and condition of the bank,
- (2) The adequacy of its capital structure,
- (3) Its future earnings prospects,
- (4) The general character and fitness of its management, including but not limited to the management of the branch proposed to be insured,
- (5) The risk presented to the Bank Insurance Fund or the Savings Association Insurance Fund,
- (6) The convenience and needs of the community to be served by the branch,
- (7) Whether or not its corporate powers, insofar as they will be exercised through the proposed insured branch, are consistent with the purposes of this Act, and
- (8) The probable adequacy and reliability of information supplied and

to be supplied by the bank to the Corporation to enable it to carry out its functions under this Act.

12 U.S.C. 1815(b). This review is similar to NCUA's review of an insurance application under the Federal Credit Union Act. 12 U.S.C. 1781(c)(1).

Bank and thrift deposits held outside the United States are not insured unless the financial institution has an express agreement with the depositor. The term "deposit" is defined to exclude:

[A]ny obligation of a depository institution which is carried on the books and records of an office of such bank or savings association located outside of any State; unless: (i) Such obligation would be a deposit if it were carried on the books and records of the depository institution, and would be payable at, an office located in any State; and (ii) the contract evidencing the obligation provides by express terms, and not by implication, for payment at an office of the depository institution located in any State.

12 U.S.C. 1813(l)(5)(A). An account in a foreign branch of an FDIC-insured branch is a "deposit", and therefore insured, only if it meets the above definition. It is NCUA's understanding that the general practice in the banking industry is to establish accounts in foreign branches as uninsured accounts.

There is no comparable definition of deposit or share account in the Act or NCUA's regulations that provides a credit union with the ability to choose whether a foreign share account is federally-insured. Therefore, without a regulatory change, if a state-chartered federally-insured credit union opens a branch office outside the United States, the member share accounts at that branch would be federally-insured.

### C. Regulatory and Supervisory Issues Related to the National Credit Union Share Insurance Fund

Section 201(c)(1) of the FCU Act (12 U.S.C. 1781(c)(1)) authorizes NCUA to determine insurability of accounts of federally-insured state-chartered credit unions. Section 201(c)(1) states, in part, that the NCUA Board shall disapprove the application of any credit union for insurance of its member accounts if it finds that:

[I]nsurance of its member accounts would otherwise involve undue risk to the fund, or that its powers and purposes are inconsistent with the promotion of thrift among its members and the creation of a source of credit for provident or productive purposes.

Insuring foreign national member accounts in state-chartered credit union branches established outside of the U.S. will present challenging supervisory problems. A key area of concern will be the enforcement of NCUA's liquidation and conservatorship powers.

NCUA has previously encountered some difficulties liquidating credit unions with offices located outside of the 50 states. Some of the challenges encountered by NCUA included problems in the collection of loans, difficulty in finding local counsel to do collection work and fraud investigations, problems in securing assistance from the local taxing authority and lack of the necessary enforcement powers to pursue NCUA's legal rights.

Supervisory issues regarding branches located outside the United States could include increased costs to NCUA in hiring additional staff and educating existing examiners about the unique problems associated with supervision of a foreign branch. Examiners and credit union management will need to understand the laws of the foreign country where they are operating to ensure compliance with tax responsibilities, consumer compliance laws, employment laws, capital requirements, and other requirements of foreign laws. In addition, problems may arise with on-site management of a foreign branch, who may be recruited from the host country. NCUA may not be able to obtain adequate information on the manager's background, experience, and expertise. This may present problems because NCUA needs this information to approve appointments and changes in officials for newly chartered credit unions or credit unions in troubled condition. 12 CFR 701.14. Other practical problems of supervising foreign operations include loan collection, currency conversion, licensing requirements, and obtaining permission of the host country's regulators.

NCUA and state supervisory authorities (SSAs) will encounter numerous examination issues if state-chartered credit unions engage in foreign branching. Although it is difficult to foretell how the variety of accounting practices and standards will be handled in a foreign branch, it would seem likely the accounting standards in that country will prevail. If so, because those standards may contain a possible different assessment of full and fair disclosure, the domestic credit union will have to include a financial analysis of the risk to the NCUSIF presented by foreign branch operations. To reduce this risk, NCUA may want to consider requiring an opinion audit of credit unions with foreign branches. While not insurmountable, other issues will also have to be addressed such as examination standards for credit unions with foreign operations, examination completion and supervision

responsibility, 5300 report collection and resolution of disputes between NCUA, the SSA, and foreign regulators.

Along with supervision and examination issues, there are safety and soundness considerations when a credit union becomes involved in foreign branching. Since the branch is located on foreign territory, NCUA and the SSA have no authority to insulate the branch from the impact of foreign law. These laws, when applied to situations such as collection of delinquent loans, collateralization and repossession of loans in general, and liquidation of a failing branch, may present a higher risk to the NCUSIF than that of a stateside credit union. Fluctuating exchange rates caused by maintaining shares in foreign currency will also present an ongoing challenge to credit unions and the NCUSIF.

To address some of these issues, NCUA may want to consider the FDIC model of higher capital requirements, for credit unions involved in foreign branching. NCUA may also want to consider a different method of evaluation of the allowance for loan losses, to take into account the additional risk of managing loan collection in foreign countries.

Whether a credit union can obtain adequate bond coverage for foreign operations must also be evaluated. Fidelity bond coverage is required of all federally-insured credit unions pursuant to Section 741.201 of NCUA's Regulations.

### D. NCUA Board Options for Insuring Foreign Branches of State-Chartered Credit Unions

The NCUA Board is considering numerous options to address the issues identified above. One option is to only permit federally-insured state chartered credit unions to serve foreign nationals in their field of membership, on the same terms currently permitted for federal credit unions. That is, foreign nationals in the field of membership could be served pursuant to an approved business plan, with branches being limited to U.S. embassies and U.S. military installations. Another option is to insure state chartered credit unions that operate foreign branches, but with regulatory limitations designed to mitigate risk to the NCUSIF. The following are among the limitations that might be considered:

- Allow foreign branches for the purpose of serving employees of U.S. or international organizations in the credit unions field of membership, but prohibit select employee group expansions or other expansion based on the foreign branch;

- Provide that accounts at foreign branches are not insured, or to provide an option as to whether they are insured;
- Require a separate application for insurance for foreign branch operations with factors to be considered enumerated in NCUA's regulations;
- Limit the amount of total loans, issued at a foreign branch, in relation to insured and uninsured shares;
- Require specific, minimum capital amounts based on the size of the loan portfolio and require mandatory charge-offs of loans greater than 120 days past due; and
- Limit the amount of loans to foreign nationals outside the United States to the uninsured deposits at the foreign branch. Uninsured shares would act as the primary offset for loan losses after capital reserved for the branch is depleted.

The above-noted items are presented as examples of options that the NCUA Board may consider. The NCUA Board welcomes other suggestions from credit unions and other interested parties.

By the National Credit Union Administration Board on September 7, 2000.

**Becky Baker,**

*Secretary of the Board.*

[FR Doc. 00-23464 Filed 9-13-00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2000-CE-49-AD]

RIN 2120-AA64

#### Airworthiness Directives; S.N. CENTRAIR 101 Series Gliders

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to certain S.N. CENTRAIR 101 series gliders. The proposed AD would require you to inspect the airbrake control system for cracks; and if cracks are detected, replace the airbrake control system. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the France. The actions specified in the proposed AD are intended to detect cracks in the airbrake control system and replace cracked parts with parts of improved design. A

crack in the airbrake control system could prevent the pilot from using the airbrake system.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule by October 16, 2000.

**ADDRESSES:** Send comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-CE-49-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may read comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get service information that applies to the proposed AD from S.N. CENTRAIR, Aerodome—36300 Le Blanc, France; telephone: 02.54.37.07.96; facsimile: 02.54.37.48.64. You may read this information at the Rules Docket at the above address.

#### FOR FURTHER INFORMATION CONTACT:

Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4144; facsimile: (816) 329-4090.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

*How do I comment on this proposed AD?* We invite your comments on the proposed rule. You may send whatever written data, views, or arguments you choose. You need to include the rule's docket number and send your comments in triplicate to the address specified under the caption **ADDRESSES**. We will consider all comments received by the closing date specified above, before acting on the proposed rule. We may change the proposals contained in this notice because of the comments received.

*Are there any specific portions of the proposed AD I should pay attention to?* The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might require a change to the proposed rule. You may read all comments we receive. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

The FAA is reviewing the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We want to read your comments on the ease of

understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at <http://www.faa.gov/language/>.

*How can I be sure FAA receives my comment?* If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000-CE-49-AD." We will date stamp and mail the postcard back to you.

#### Discussion

*What events have caused this proposed AD?* The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently told the FAA that an unsafe condition may exist on certain S.N. CENTRAIR 101 series gliders. The DGAC reports that a failure analysis of the welded parts of airbrake arms revealed that cracks could occur in these parts.

*What happens if you do not correct the condition?* This condition, if not corrected, could result in undetected cracks. Consequently, a crack in the airbrake control system could prevent the pilot from using the airbrake system.

#### Relevant Service Information

*Is there service information that applies to this subject?* S.N. CENTRAIR has issued Service Bulletin No. 101-16, Revision 3, dated February 2, 1999.

*What are the provisions of this service bulletin?* The service bulletin describes procedures for:

—Inspecting the airbrake control system for cracks; and

—Replacing the airbrake control system.

*What actions did the French take?* The DGAC issued French AD Number 1995-261(A) R3, dated January 26, 2000, to assure the continued airworthiness of these gliders in France.

*Was this in accordance with the bilateral airworthiness agreement?* S.N. CENTRAIR manufactured this glider model in France. The FAA type certificated the glider model for operation in the United States under § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Complying with this bilateral airworthiness agreement, the DGAC kept FAA informed about the failure analysis.