Federal Register
Vol. 44, No. 91
Wednesday, May 9, 1979

Presidential Documents

Title 3—

The President

Memorandum of May 7, 1979

Extension of Determination Under Section 110(f) of the Clean Air Act—Florida

Memorandum for the Administrator, Environmental Protection Agency

Based on a request submitted to me by the Governor of the State of Florida to extend my April 6, 1979 determination that a regional energy emergency exists in the State of Florida of such severity that a temporary suspension of certain particulate and opacity control regulations which apply to fossil-fuel fired electric generating plants under the Florida Air Quality Implementation Plan be necessary, and that other means of responding to the energy emergency may be inadequate, I hereby extend that determination from May 5 to June 4, 1979. This extension shall be effective for not more than thirty (30) days and is limited by the same conditions as my original determination. If, during the extension, I find that a regional energy emergency no longer exists in Florida, I will direct that this extension be rescinded and that all suspension orders issued by the Governor be terminated on the day of that rescission. You will continue to retain full authority to disapprove temporary suspension of regulations in Florida and to exercise your emergency powers authority under Section 303 of the Clean Air Act, when and if necessary.

It is important to keep suspensions to an absolute minimum since Section 110(f) of the Clean Air Act limits each suspension to a maximum duration of 120 days.

This determination shall be published in the **Federal Register.**

Jimmy Carter

THE WHITE HOUSE,
Washington, May 7, 1979.

[FR Doc. 79-14682
Filed 5-8-79; 11:04 am]
Billing code 3195-01-M

Proclamation 4660 of May 8, 1979

Flag Day and National Flag Week, 1979

By the President of the United States of America
A Proclamation

Two years after the Battle of Bunker Hill, on June 14, 1777, the Continental Congress chose a flag which tellingly expressed the unity and resolve of Colonials who had banded together to seek independence. The delegates voted "that the flag of the thirteen United States be thirteen stripes, alternate red and white; that the union be thirteen stars, white in a blue field representing a new constellation."

With the addition of thirty-seven stars, and after more than two centuries of history, the flag chosen by the Continental Congress in Philadelphia is our flag today, symbolizing a shared commitment to freedom and equality.

To commemorate the adoption of our flag, the Congress, by a joint resolution of August 3, 1949 (63 Stat. 492), designated June 14 of each year as Flag Day and requested the President to issue annually a proclamation calling for its observance. The Congress also requested the President, by joint resolution of June 9, 1966 (80 Stat. 194), to issue annually a proclamation designating the week in which June 14 occurs as National Flag Week and to call upon all citizens of the United States to display the flag of the United States on those days.

To focus the attention of the American people on their country's character, heritage and future well-being, the Congress has also, by joint resolution of June 13, 1975, set aside the 21 days from Flag Day through Independence Day as a period to honor America (89 Stat. 211).

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby designate the week beginning June 10, 1979, as National Flag Week, and I direct the appropriate officials of the Government to display the flag on all Government buildings during the week. I urge all Americans to observe Flag Day, June 14, and Flag Week by flying the Stars and Stripes from their homes and other suitable places.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of May, in the year of our Lord nineteen hundred seventy-nine, and of the Independence of the United States of America the two hundred and third.

Jimmy Carter

FR Doc. 79-14683
[Filed 5-8-79; 11:05 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 44, No. 91
Wednesday, May 9, 1979

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

7 CFR Part 2

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Revision of Delegations of Authority by the Secretary of Agriculture and General Officers of the Department

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document delegates authority to the Assistant Secretary for Marketing and Transportation Services and to the Under Secretary for International Affairs and Commodity Programs to administer functions under the Wheat and Wheat Foods Research and Nutrition Education Act and to redelegate that authority to the Administrators of the Agricultural Marketing Service and the Foreign Agricultural Service. These amendments to the delegations of authority are necessary for the expeditious handling of this program and to make other necessary changes.

EFFECTIVE DATE: May 9, 1979.

FOR FURTHER INFORMATION, CONTACT: W. David Spalding, Livestock, Poultry, Grain, and Seed Division, AMS, USDA, Washington, D.C., 20250, Phone: 202–447–3970.

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Subtitle A, Title 7 Code of Federal Regulations is amended as follows:

Subpart C—Delegations of authority to the Deputy Secretary, Under Secretary for International Affairs and Commodity Programs, Assistant Secretaries, the Director of Economics, Policy Analysis and Budget, and the Director, Office of Governmental and Public Affairs

1. Section 2.17 is amended by adding a new paragraph (a)(3)(xxxii) and revising paragraph (a)(3)(xxxi) to read as follows:

§ 2.17 Delegations of authority to the Assistant Secretary for Marketing and Transportation Services.

* * * * *

(a) *Related to agricultural marketing.*

* * *

(3) * * *

(xxxi) Beef Research and Information Act, as amended, (7 U.S.C. 2901–2918), except as delegated to the Under Secretary for International Affairs and Commodity Programs in § 2.21(a)(33) and § 2.21(d)(10).

(xxxii) Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417), except as delegated to the Under Secretary for International Affairs and Commodity Programs in § 2.21(d)(10).

* * * * *

2. Section 2.21 is amended by revising paragraphs (a)(33) and (d)(10) to read as follows:

§ 2.21 Delegations of authority to the Under Secretary for International Affairs and Commodity Programs.

* * * * *

(a) *Related to agricultural stabilization and conservation.* * * *

(33) Conduct producer referendums required under Section 9 of the Beef Research and Information Act, as amended, (7 U.S.C. 2908).

* * * * *

(d) *Related to foreign agriculture.*

* * *

(10) Plan and carry out programs and activities under the foreign market promotion authority of the Wheat Research and Promotion Act (7 U.S.C. 1292 note); the Cotton Research and Promotion Act (7 U.S.C. 2101–2118); Section 610 of the Agricultural Act of 1970 (7 U.S.C. 2119); the Potato Research and Promotion Act (7 U.S.C. 2611–2627); the Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); the National Wool Act of 1954, as amended (7 U.S.C. 1781–1787); The Beef Research and Information Act, as amended, (7 U.S.C. 2901–2918); and the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417). This authority includes determining the programs and activities to be undertaken and assuring that they are coordinated with the overall departmental programs to develop foreign markets for U.S. agricultural products.

* * * * *

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Transportation Services

3. Section 2.50 is amended by adding paragraph (a)(3)(xxxiii) and revising paragraph (a)(3)(xxxii) to read as follows:

§ 2.50 Administrator, Agricultural Marketing Service.

(a) *Delegations.* * * *

(3) * * *

(xxxii) Beef Research and Information Act, as amended.

(7 U.S.C. 2901–2918), except as delegated in § 2.65(a)(33) and § 2.68(a)(10).

(xxxiii) Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417), except as delegated in § 2.68(a)(10).

* * * * *

Subpart H—Delegations of Authority by the Under Secretary for International Affairs and Commodity Programs

4. Section 2.65 is amended by revising paragraph (a)(33) to read as follows:

§ 2.65 Administrator, Agricultural Stabilization and Conservation Service.

(a) *Delegations.* * * *

(33) Conduct producer referendums required under Section 9 of the Beef Research and Information Act, as amended, (7 U.S.C. 2908).

* * * * *

5. Section 2.68(a)(10) is amended to read as follows:

§ 2.68 Administrator, Foreign Agricultural Service.

(a) *Delegations.* * * *

(10) Plan and carry out programs and activities under the foreign market

promotion authority of the Wheat Research and Promotion Act (7 U.S.C. 1292 note); the Cotton Research and Promotion Act (7 U.S.C. 2101–2118); Section 610 of the Agricultural Act of 1970 (7 U.S.C. 2119); the Potato Research and Promotion Act (7 U.S.C. 2611–2627); the Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); the National Wool Act of 1954, as amended, (7 U.S.C. 1781–1787); the Beef Research and Information Act, as amended, (7 U.S.C. 2901–2918); and the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417). This authority includes determining the programs and activities to be undertaken and assuring that they are coordinated with the overall departmental programs to develop foreign markets for U.S. agricultural products.

* * * * *

(5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.)

For Subpart C:

Dated: May 4, 1979.

Bob Bergland,

Secretary.

For Subpart F:

Dated: May 4, 1979.

Jerry C. Hill,

Deputy Assistant Secretary for Marketing and Transportation Services.

For Subpart H:

Dated: May 4, 1979.

Dale E. Hathaway,

Assistant Secretary.

[FR Doc. 79-14509 Filed 5-8-79; 8:45 am]

BILLING CODE 3410-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Federal Credit Unions: Purchase, Sale, and Pledge of Eligible Obligations

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The rule permits a Federal credit union to do the following things. First, it can purchase from, sell to, or pledge to any source any eligible obligations of its members. Second, it can purchase from a liquidating credit union any eligible obligations of the liquidating credit union's individual members. Eligible obligations purchased on this basis can be sold or pledged to any source. Third, if granting student loans on an ongoing basis, it can purchase student loans from any source, if the purchase will facilitate the purchaser's packaging of a pool of such loans to be sold or pledged on the secondary market. Student loans purchased on this basis can be sold or pledged to any source. Fourth, if granting real estate loans pursuant to Section 701.21–6 on an ongoining basis, it can purchase real estate loans from any source, if the purchase will facilitate the purchaser's packaging of a pool of such loans to be sold or pledged on the secondary mortgage market. Real estate loans purchased on this basis can be sold or pledged to any source. The rule is necessary to implement provisions of the April 19, 1977 amendments (Pub. L. 95–22, 91 Stat. 49) to the Federal Credit Union Act. It is intended to provide Federal credit unions greater flexibility both in meeting member demands and in spreading the risk of those demands. It is also intended to provide Federal credit unions making student loans and Federal credit unions making long term real estate loans greater access to the respective secondary markets. This should enhance a credit union's ability to react quickly and efficiently to meet liquidity needs.

EFFECTIVE DATE: This rule will be effective on May 9, 1979. However, comments on it will be accepted if received on or before June 15, 1979. If necessary, an amended rule will be issued later.

ADDRESS: Send comments to Robert S. Monheit, Senior Attorney, Office of General Counsel, National Credit Union Administration, Room 4202, 2025 M Street, N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Stephen Raver, Director, Division of Examination, Office of Examination and Insurance, or John L. Culhane, Jr., Attorney-Advisor, Office of General Counsel, National Credit Union Administration, 2025 M Street, N.W., Washington, D.C. 20456. Telephone numbers: (202) 254–8760 (Mr. Raver), (202) 632–4870 (Mr. Calhane).

SUPPLEMENTARY INFORMATION: Before Pub. L. 95–22 was passed, Federal credit unions could not purchase, sell, or pledge obligations of their members. Pub. L. 95–22 granted these powers, to be implemented by rules adopted by the Administration.

As an interim measure, the Administration issued a rule allowing Federal credit unions to sell long term real estate loans to the Federal National Mortagage Association, the Federal Home Loan Mortagage Corporation, and to Federal, State, and local housing authorities. This interim rule was later amended to allow Federal credit unions to sell their members' guaranteed student loans to the Student Loan Marketing Association.

On January 2, 1979, the Administration published a proposed rule, which would, when adopted in final form, replace the interim rule. 44 FR 60 (1979). Comments were requested by January 31, 1979. Shortly after the public comment period ended, one commenter requested, and was granted, permission to submit comments. Those comments were received on February 26, 1979. They were considered, along with all other comments received on or before that date.

Virtually all of the comments were favorable. Several commenters, while agreeing with most of the provisions of the proposed rule, raised questions or made suggestions that convinced the Administration that a number of changes from the proposed rule are warranted. In addition, some changes have been made to resolve problems detected by the Administration. This final rule replaces the interim rule, effective immediately.

Analysis of Changes and Comments

1. Purchases

a. Overlap. The final rule allows a Federal credit union to purchase different loans in different situations. It can purchase an eligible obligation of one of its members from any source. It can purchase an eligible obligation of a liquidating credit union's individual member from the liquidating credit union. It can purchase a student loan for pooling purposes. It can purchase a real estate loan for pooling purposes. As noted by several commenters, these provisions can overlap.

Where the provisions overlap, the purchaser may decide which provision it has relied on. This decision does not have to be made when the loan is purchased. However, if the purchaser delays too long it may find that it cannot use certain provisions. The circumstances that existed when the purchase was made, such as whether or not the borrower was then a member of the purchasing credit union, will govern in determining which provisions might have been used.

There will be different consequences depending upon which provision is selected. For example, suppose a Federal credit union discovers that it has purchased a real estate loan of one of its own members from a liquidating credit union. The loan has a maturity of thirty-five years, so it could not have been granted by the Federal credit union. This loan could have been purchased either as an eligible

obligation of a member, as an eligible obligation sold by a liquidating credit union, or in the proper circumstances, as a loan to be used in packaging a pool.

In this situation, the Federal credit union should consider these factors, among others, in making its decision. The loan must be refinanced within 60 days of the date it was purchased (as discussed below) if the Federal credit union wants to treat it as having been purchased as an eligible obligation of a member. If more than 60 days have passed, this provision could not be used. The loan need not be refinanced if it is to be treated as a loan purchased from a liquidating credit union. Under the proper circumstances, it could be treated as a loan purchased for pooling purposes. In that case, it would have to be promptly sold or pledged on the secondary market.

b. Eligible Obligations of Members. A Federal credit union can purchase the eligible obligation of a member if the obligation is a "loan it is empowered to grant." As originally drafted, the proposed rule required that the eligible obligation be a "type of loan [a Federal credit union] is empowered to grant." The phrase "type of loan" has been deleted from the final rule, since, as noted by one commenter, it was somewhat misleading. The basic restriction has been retained, however. It remains the Administration's belief that Congress did not intend that Federal credit unions should be handling unfamiliar obligations, with certain limited exceptions.

In order to provide some flexibility, a provision has been added which will allow a Federal credit union to purchase a member's loan which it could not grant, regardless of who the seller is. When this is done, the loan must be refinanced, within 60 days of the date it is purchased, to comply with the lending restrictions placed on Federal credit unions. For example, a consumer loan bearing interest at an annual rate of 13 percent could be purchased if refinanced so that the annual interest rate is no greater than 12 percent. In addition, the member must consent to the refinancing. To assure that this will happen, a Federal credit union should obtain the member's consent before completing arrangements to purchase the loan.

One problem concerning the purchase of eligible obligations of members has been noted. It is the extent to which Section 701.21–4 of the Administration's regulations should apply when the member whose loan is being purchased is also an official of the Federal credit union buying the loan.

Section 701.21–4 basically requires the board of directors to approve certain loan applications. Board approval is necessary on certain loans to officials and on certain loans guaranteed or endorsed by officials. To avoid any claims of preferential treatment of officials, the purchase of an official's loan and the purchase of a loan endorsed or guaranteed by an official will normally be treated as though the credit union is actually granting the loan. If under § 701.21–4 board approval would be necessary to grant the loan, it will be necessary to purchase the loan. Section 701.21–4 will soon be amended to explain how the appropriate calculations will be made.

The Administration does not intend to require board approval, however, where an official's loan or a loan endorsed or guaranteed by an official is purchased from a liquidating credit union. Nor will board approval be required where such a loan is purchased for pooling purposes. Board approval would slow down the liquidation process in the first case. In the second, it would unduly hamper a Federal credit union trying to package a pool of loans for the secondary market.

c. Eligible Obligations of a Liquidating Credit Union. One commenter asked how the proposed rule would relate to Section 701.29, the present rule governing the purchase of notes from a liquidating credit union. Having reviewed the requirements of Section 701.29, the Administration has decided to delete that Section. The purchase of notes from a liquidating credit union will be governed by this rule.

One change has been made from the proposed rule. Recognizing that the power to purchase notes from a liquidating credit union was added in part to speed up the liquidation process, the Administration has deleted the requirement that loans purchased be ones that the purchasing Federal credit union could have granted.

d. Student Loans. The Student Loan Marketing Association requested that the Administration review the language and legislative history of the Federal Credit Union Act to determine if Federal credit unions can purchase student loans of members and non-members in order to package a pool of loans to be sold or pledged on the secondary market. The Administration has concluded that this may be done provided that the purchasing credit union is granting student loans on an ongoing basis and provided that the loans purchased are ones on which payment has been deferred. In addition, the loans purchased must be secured by the insurance or guarantee of the Federal Government, or a State government, or any agency of either.

As the Administration has noted, Section 107(13) of the Federal Credit Union Act (12 U.S.C. 1757(13)), which authorizes the purchase of eligible obligations, does not authorize a Federal credit union to purchase a loan unless the person liable on the loan happens to be a member of that credit union (or unless the seller is a liquidating credit union). However, considering the Congressional intent in enacting Pub. L. 95–22 to encourage Federal credit union lending to accomplish certain social or economic objectives, the Administration does not believe that Congress intended Section 107(13) to be an express prohibition on such purchases, provided they are authorized by other sections of the Act.

It is the Administration's belief that the power to purchase student loans is incidental to the power granted in section 107(5)(A)(iii) (12 U.S.C. 1757(5)(A)(iii)) to make loans secured by the insurance or guarantee of government agencies. In order to operate an effective student loan program, where payments on the loans are deferred, a Federal credit union must be able to access efficiently the secondary market for such loans. This can best be done by pooling these loans. Pooling is advantageous where a portfolio of a certain size must be amassed in order to qualify for a par purchase. Also, there may be important administrative advantages under a pooling arrangement, since only the Federal credit union packaging the pool will be a party to any purchase contract.

Student loans purchased to package a pool of loans will be treated similarly to real estate loans purchased to package a pool of loans. Consequently, they will not be included in determining whether the aggregate balance of unpaid notes purchased has exceeded 5 percent of the unimpaired capital and surplus of the purchaser.

To encourage Federal credit unions to make student loans and to assemble a pool of such loans to be sold or pledged on the secondary market, the Administration will permit the purchase of non-member loans for pooling purposes. However, because they will be purchasing loans of non-members, Federal credit unions will be expected to sell or pledge obligations purchased to package a pool of loans promptly. Arrangements to dispose of such loans should generally be made in advance of their purchase by obtaining a commitment from a buyer to purchase

the pool of loans before the pool is actually assembled.

The Administration believes that pooling student loans will benefit smaller Federal credit unions granting student loans by making entry into the secondary market more feasible. It will benefit larger Federal credit unions by allowing them to sell or pledge their loans in such a way as to take greater advantage of marketplace conditions. It will benefit credit union members by generating more funds for additional student loans.

e. Real Estate Loans. The comments received concerning the purchase of real estate loans for pooling purposes prompted the Administration to reexamine the statutory authority for this power. Balancing the need for efficient access to the secondary mortgage market against Congressional intent in restricting the real estate loans that can be made by Federal credit unions, the Administration had proposed to allow Federal credit unions actively engaged in real estate lending to purchase loans, for pooling purposes, only from other credit unions and only if those loans complied with § 701.21–6. These limitations were proposed to ensure that credit union funds would not be used for luxury homes or for other than one-to-four-family dwellings.

Based on its review, the Administration has decided that these limitations were unnecessarily restrictive. Consequently, the rule has been changed to allow Federal credit unions to purchase real estate loans for pooling purposes from any source. However, a loan can only be purchased if it was used to finance the acquisition of a one-to-four-family dwelling for the principal residence of the borrower, if the sales price was not more than 150 percent of the median sales price of residential real property situated in the geographical area in which the property is located, and if the loan is secured by a first lien upon such dwelling. As long as these requirements are met, maturities, interest rates, and other terms and conditions may vary from those required by § 701.21–6.

In order to purchase real estate loans for pooling purposes, the proposed rule required that a Federal credit union be "engaged in real estate lending pursuant to § 701.21–6." Because there seemed to be some confusion both as to how this phrase was to be interpreted and as to the degree of activity required, it has been revised. A Federal credit union must now be "granting real estate loans pursuant to § 701.21–6 on an ongoing basis."

This means that the Federal credit union's board of directors must have adopted a policy of granting long term real estate loans. The Federal credit union must actually be granting these loans, i.e. accepting applications, processing them, and disbursing its own funds. This must be done on an ongoing basis.

The purchase of loans must also "facilitate the purchaser's packaging of a pool of such loans." This means that the Federal credit union must include a substantial portion of its own loans in the pool. Once it disposes of, i.e. sells or pledges, a particular pool of loans, it must then grant more loans before a second pool can be assembled.

Should the board of directors decide that the credit union will stop making real estate loans, it will still be considered by the Administration to be "granting real estate loans . . . on an ongoing basis" for a reasonable period (e.g. 60 days) after the board's decision becomes final. Loans may be purchased for pooling purposes up to that time, provided that this last pool is disposed of promptly.

Given the statutory authority for this power, the Administration does not believe that the phrase "granting real estate loans pursuant to § 701.21–6 on an ongoing basis" can be deleted, nor can a specific exception be made for corporate centrals, as suggested by one commenter. If a central or corporate central has natural members to which it grants real estate loans on an ongoing basis, then it may purchase real estate loans for pooling purposes, if the purchase will facilitate the packaging of a pool.

Because they will be purchasing loans of non-members and loans they could not grant, Federal credit unions will be expected to sell or pledge obligations purchased to package a pool of loans promptly. Arrangements to dispose of such loans should generally be made in advance of their purchase by obtaining a commitment from a buyer to purchase the pool of loans before the pool is actually assembled.

f. The 5% Limitation. Two comments were received concerning this provision, which would have limited the amount of loans that could be purchased to 5 percent of the unimpaired capital and surplus of the purchaser. One commenter requested that a waiver clause be added allowing a Federal credit union to make more purchases with the Administration's prior written approval. Another commenter reviewed the legislative history of the provision and argued that the limitation should apply only to obligations of non-members purchased from liquidating credit unions.

The Administration feels that the language of Section 107(13) is clear, and that the best interpretation is that adopted in the proposed rule. However, exceptions have been written into the rule for student loans and real estate loans purchased to package a pool of loans for the appropriate secondary market. The limitation is not applicable in those cases because such purchases are not made pursuant to Section 107(13). A similar restriction has not been imposed so as not to hamper the ability of Federal credit unions to access the respective secondary markets.

2. Sales

Although no comments were received concerning these provisions, two changes have been made. The Administration has amended the rule to clarify that student loans purchased to package a pool may be resold. The rule has also been amended to allow a Federal credit union to sell any loans it purchased using the power to purchase eligible obligations of a liquidating credit union's individual members from the liquidating credit union.

This second change is the result of the Administration's examination of relevant judicial decisions and of the language and legislative history of the Federal Credit Union Act. The Administration has concluded that the power to purchase notes from a liquidating credit union by implication includes the power to sell or pledge those loans.

3. Pledges

The one comment received on these provisions concerned the requirement of the proposed rule that the original loan documents be retained. The commenter noted that the Uniform Commercial Code will usually require that the party to whom loan documents have been pledged take possession of those documents in order to have priority over other creditors who may also have a security interest in them. In addition, in the event of default by a Federal credit union that has pledged loan documents as security for a loan it obtained, the lender will need to take possession of the loan documents to sell them.

The Administration agrees that a change is warranted and has therefore amended the rule to require that copies of the original loan documents be retained. The requirement has not been eliminated, as suggested by the commenter. The Administration believes that the loan documents or copies of them should be available for review by

the agency's examiners in order to assure that the loans comply with applicable laws and with sound credit union practice.

Two other changes have been made. The rule has been amended to allow a Federal credit union to pledge any loan it purchased using the power to purchase eligible obligations of a liquidating credit union's individual members from the liquidating credit union. The Administration has also amended the rule to clarify that student loans purchased to package a pool of loans may be pledged.

4. Discounts

In the preamble to the proposed rule the Administration announced that it did not presently intend to regulate the discounting of eligible obligations. Credit union officials were advised that any abuses would be remedied by administrative actions, including cease and desist actions. The Administration also advised that, under the proper circumstances, it would consider civil and criminal actions against the directors of a credit union who abuse the power. One commenter, referring to the possibility of civil or criminal liability, requested guidelines as to what would be considered reasonable.

The Administration believes that the facts of each case will, for the most part, determine whether or not a discounting was reasonable. Consequently, in reviewing a particular transaction the Administration will look at the effect of that transaction on the credit union's equity. It will also look to see if the transaction was designed to benefit certain officials, creditors, or third parties at the expense of the credit union.

5. Ten Percent Limitation

The proposed rule required that a Federal credit union's retained or acquired interest in loans to a member be added with other loans to the member and with partial interests in participation loans to determine the member's total indebtedness to the credit union. The sum of these amounts could not exceed 10 percent of the credit union's unimpaired capital and surplus. Real estate loans purchased to package a pool of loans to be sold or pledged on the secondary mortgage market were to be excluded in determining whether this limit would be exceeded.

Upon reconsideration, the Administration has revised this part of the rule. Real estate loans of members *will* be considered in determining whether the 10 percent limit has been exceeded, even if they are purchased for pooling purposes. In addition, when used in this part of the rule, the word "person" will be interpreted to mean both a member and a non-member. Consequently, the same calculations used to determine a member's total indebtedness will be used to determine a non-member's total indebtedness to the credit union. This sum may not exceed the 10 percent limit.

Real estate loans purchased for pooling purchases had originally been excluded so as not to hamper the purchasing credit union's ability to access the secondary mortgage market. Because Federal credit unions must generally have assets of $2,000,000 or more to engage in real estate lending, and hence, to purchase other real estate loans for pooling purposes, this change should not adversely affect the purchasing credit union's ability to access the secondary market. Similarly, because a real estate loan cannot be purchased for pooling purposes if its sales price exceeds 150 percent of the median sales price of residential real property in the geographical area in which the property is located, this change should have little effect on the real estate loans that can be purchased for pooling purposes.

The change will serve to protect a credit union in the rare case where, under the proposed rule, a large loan could have been purchased. In that case, had the borrower defaulted before the loan was sold, the credit union's financial stability could have been jeopardized. Because the 10 percent limit protects the credit union when any one person defaults, the rule has been revised so that similar protection will be afforded when non-member loans are purchased, regardless of whether they are purchased from liquidating credit unions or are purchased from other sources to be used in assembling pools of real estate or student loans.

6. Effective Date

Several commenters requested that the final rule be effective immediately upon publication. The Administration is convinced that good cause exists for the rule to become effective prior to thirty days from the date of publication in the **Federal Register.**

Although Federal credit unions may now grant long term real estate loans, they cannot always convert these loans into funds which can be used to generate additional loans. Further, by limiting the institutions to which Federal credit unions may sell loans, the interim rule subjects Federal credit unions to the risk of fluctuating interest rates, should they be unable to meet the yield required by those institutions. The present interim rule, because it does not allow Federal credit unions to purchase non-member real estate loans for pooling purposes, also does not allow efficient access to the secondary mortgage market. Therefore, to ensure the liquidity of Federal credit unions making these loans, Federal credit unions need to be able to pool these loans and to sell them to any source immediately.

While the Administration believes that these reasons outweigh the need for a delayed effective date, the Administration recognizes its duty to provide an opportunity for further comment since substantive changes have been made. Therefore, comments received on or before June 15, 1979 will be considered, and, should a demonstrated need arise, further amendments to the rule will be made.

Lawrence Connell,
Administrator.

May 3, 1979.

(Sec. 107(5)(A)(i), (iii), 91 Stat. 49 (12 U.S.C. 1757(5)(A)(i), (iii)), Sec. 107(13), 91 Stat. 51 (12 U.S.C. 1757(13)), Sec. 107(15), 82 Stat. 284 (12 U.S.C. 1757(15)), Sec. 120, 73 Stat. 635 (12 U.S.C. 1766) and Sec. 209, 84 Stat. 1104 (12 U.S.C. 1789))

Part 701—Organization and Operation of Federal Credit Unions

Accordingly, 12 CFR Part 701 is amended by replacing existing § 701.21–8 with the following and by deleting existing § 701.29 and reserving that section for later use:

§ 701.21–8 Purchase, sale, and pledge of eligible obligations.

(a) For purposes of this section:

(1) "Eligible obligation" means a loan or group of loans, other than a line of credit loan, except, however, the term shall include a line of credit loan of a liquidating credit union.

(2) "Student loan" means a loan granted to finance the borrower's attendance at an institution of higher education or at a vocational school, which is secured by and on which payment of the outstanding principal and interest has been deferred in accordance with the insurance or guarantee of the Federal Government, of a State government, or any agency of either.

(3) "Real estate loan" means a loan granted to finance the acquisition of a one-to-four-family dwelling for the principal residence of the borrower, the sales price of which is not more than 150 percent of the median sales price of residential real property situated in the geographical area in which the property

is located, and which is secured by a first lien upon such dwelling.

(4) "Obligation account" means a special payable account established for the accumulation of payments on a loan awaiting distribution to the purchaser of an eligible obligation.

(b) *Purchase.* (1) A Federal credit union may purchase, in whole or in part, within the limitations of the board of directors' written purchase policies:

(i) Eligible obligations of its members, from any source, if either (A) they are loans it is empowered to grant or (B) they are refinanced with the consent of the borrowers, within 60 days after they are purchased, so that they are loans it is empowered to grant;

(ii) Eligible obligations of a liquidating credit union's individual members, from the liquidating credit union;

(iii) Student loans, from any source, if the purchaser is granting student loans on an ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledged on the secondary market; and

(iv) Real estate loans, from any source, if the purchaser is granting real estate loans pursuant to section 701.21–6 on an ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledged on the secondary mortgage market. The dollar amount of loans purchased in accordance with this subsection shall be included in the aggregate dollar amount of real estate loans allowed under § 701.21–6(b)(4).

(2) A Federal credit union may make purchases in accordance with subsection (b), *provided:*

(i) The board of directors or investment committee approves the purchase; and

(ii) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the purchaser's office.

(3) The agreement to purchase a partial interest in eligible obligations shall, at a minimum:

(i) Identify the eligible obligations covered by the agreement;

(ii) Provide for the collection, processing and/or remittance of payments of principal and interest, late charges, service charges, escrow accounts (if required), and obligation accounts;

(iii) Disclose the responsibilities of each party in the event an eligible obligation becomes subject to collection, loss or foreclosure;

(iv) Provide that in the event of loss each owner shall share in the loss in proportion to its interest in the eligible obligations;

(v) Provide for the distribution of payments of principal to each owner proportionate to its interest in the eligible obligation;

(vi) Provide for loan status reports; and

(vii) State the terms and conditions under which the agreement may be terminated or modified.

(4) The aggregate of the unpaid balances of eligible obligations purchased under subsection (b) shall not exceed 5 percent of the unimpaired capital and surplus of the purchaser. Student loans purchased in accordance with subsection (b)(1)(iii) and real estate loans purchased in accordance with subsection (b)(1)(iv) shall not be included in considering this 5 percent limitation.

(c) *Sale.* (1) A Federal credit union may sell, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with subsection (b)(1)(ii), student loans purchased in accordance with subsection (b)(1)(iii), and real estate loans purchased in accordance with subsection (b)(1)(iv), within the limitations of the board of directors' written sale policies, *provided:*

(i) The board of directors or investment committee approves the sale; and

(ii) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the seller's office.

(2) An agreement to sell a partial interest in eligible obligations shall at a minimum comply with the requirements set forth in subsection (b)(3).

(3) A sale of an eligible obligation shall not be subject to recourse or repurchase provisions. However, the following are permitted:

(i) An agreement which requires the seller to repurchase the eligible obligation because of any breach of warranty or misrepresentation;

(ii) An agreement which allows the seller to repurchase at its discretion; and

(iii) An agreement which allows substitution of one loan for another loan.

(d) *Pledge.* (1) A Federal credit union may pledge, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with subsection (b)(1)(ii), student loans purchased in accordance with subsection (b)(1)(iii), and real estate loans purchased in accordance with subsection (b)(1)(iv), within the limitations of the board of directors' written pledge policies, *provided:*

(i) The board of directors or investment committee approves the pledge;

(ii) Copies of the original loan documents are retained; and

(iii) A written agreement covering the pledging arrangement is retained in the office of the credit union that pledges the eligible obligations.

(2) The pledge agreement shall, at a minimum:

(i) Identify the eligible obligations covered by the agreement;

(ii) Disclose the responsibilities of each party in the event an eligible obligation becomes subject to collection, loss or foreclosure;

(iii) Set forth the terms and conditions regarding substitution; and

(iv) Set forth the terms and conditions under which the agreement may be modified or terminated.

(e) *Servicing.* A Federal credit union may agree to service any eligible obligation it purchases or sells in whole or in part.

(f) *10 Percent Limitation.* The total indebtedness owing to any Federal credit union by any person, inclusive of retained and reacquired interests, shall not exceed 10 percent of its unimpaired capital and surplus.

§ 701.29 [Reserved].

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 105

Standards of Conduct; Outside Employment and Activities

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: (i) The Agency is amending §§ 105.510(a) and (b) and 105.801(b) (1), (2) and (3) of SBA's Standards of Conduct Regulations to: (1) provide for the approval of the Assistant Administrator for Personnel Management in lieu of the Director of Personnel in cases involving outside business, employment or vocation, and (2) to provide for the new composition of the Standards of Conduct Committee.

(ii) This action arises as the result of reorganization within the Small Business Administration.

(iii) The effect of said action with respect to § 105.510 (a) and (b) will be that the Assistant Administrator for Personnel Management will approve requests for employees engaged in any outside business, employment or vocation rather than the Director of