

Attachment A
Proposed Amendments to 209 CMR 50.00: Parity with Federal Credit Unions
May 2, 2012

209 CMR 50.04 is hereby amended by deleting the definition of “Significantly undercapitalized” in its entirety.

209 CMR 50.06(1)(a) is hereby amended by deleting the words “significantly undercapitalized” and inserting in place thereof the following words:--

in troubled condition

209 CMR 50.06(1)(b) is hereby amended by deleting the words “significantly undercapitalized” and inserting in place thereof the following words:--

in troubled condition

209 CMR 50.06(3)(e) is hereby amended by deleting the words “financial institution” and inserting in place thereof the following words:--

credit union

209 CMR 50.06(3)(e) is hereby further amended by deleting the words “Federal Deposit Insurance Corporation or the”.

209 CMR 50.06(3)(g) is hereby amended by striking 50.06(3)(g) and inserting in place thereof the following:

(g) Purchase and Sale of Loan Portfolios.

1. General. A credit union may purchase, sell or pledge any consumer or mortgage loan made under M.G.L. c. 171 or 209 CMR 50.00 *et seq.*, (hereinafter "eligible obligation") subject to the requirements of 209 CMR 50.06(3)(g)2..

2. Requirements. All loan purchases, sales or pledges under 209 CMR 50.06(3)(g)1. shall conform to the procedural and substantive requirements of 12 CFR § 701.23(b) governing the purchase of eligible obligations; 12 CFR § 701.23(c) governing the sale of eligible obligations; and 12 CFR § 701.23(d) governing the pledge of eligible obligations.

(h) Consumer Loan Participations. A credit union may, by written agreement, make or invest in consumer loan participations with other credit unions, federal credit unions, federally-insured banks, any state or federal government agency and any subdivision thereof, or any credit union service organization meeting the requirements of 209 CMR 50.07 subject to the terms and conditions applicable to federal credit unions found in 12 CFR § 701.22(b) through 12 CFR § 701.22(d). For the purposes of 209 CMR

50.06(3)(h), a consumer loan shall include any loan made under M.G.L. c. 171, §§ 59-59A and §§ 65-65E, inclusive. A credit union may invest in the aggregate up to 10% of its assets in consumer loan participation interests.

(i) Non-Residential Real Estate Loan Participations. A credit union may, by written agreement, make or invest in non-residential real estate loan participations with other credit unions, federal credit unions, federally-insured banks, any state or federal government agency and any subdivision thereof, or any credit union service organization meeting the requirements of 209 CMR 50.07 subject to the terms and conditions applicable to federal credit unions found in 12 CFR §701.22(b) through 12 CFR § 701.22(d), that would be used to provide or support one of the following activities: (1) equity or debt financing for small businesses; (2) area revitalization or stabilization or (3) other activities, services or facilities that primarily promote public welfare for the purpose of meeting its obligations under the Massachusetts Community Reinvestment Act, M.G.L. c. 167, §14. For the purposes of 209 CMR 50.06(3)(i), a non-residential real estate loan participation shall include any loan made under M.G.L. c. 171 §§ 65-66, inclusive. A credit union may invest in the aggregate up to 10% of its assets in non-residential real estate loan participation interests.

(j) Additional Powers.

1. General. The authorities provided in 209 CMR 50.06(3)(j) are only for those activities listed. A credit union may engage in other activities if said activities are permitted and determined by the NCUA as incidental powers pursuant 12 CFR § 721 pursuant to regulations, guidelines or written opinions of the General Counsel of the NCUA only if the Commissioner affirmatively determines by regulation or in writing that the activity is reasonably related to an individual power set out in 209 CMR 50.06(3)(j).

2. Permissible Activities.

(a) Certain Correspondent Services.

1. Internal audits. A credit union may perform internal audits.

2. Other services. A credit union may provide the following correspondent services to foreign credit unions: loan processing, loan servicing, member check cashing services, disbursing share withdrawals and loan proceeds, cashing and selling money orders, and automated teller machine deposit services.

(b) Certain Finders Activities. A credit union may make insurance, mutual fund, and annuities available to its members through outside vendors subject to the requirements of 12 CFR § 721 and Massachusetts law, and may provide additional finder activities.

(c) Loan-related Products. A credit union may provide the following loan-related products: debt cancellation agreements and debt suspension agreements.

(d) Trustee or Custodial Services through Outside Vendors. A credit union may offer trustee or custodial services as defined at 209 CMR 50.04 through outside vendors.

(e) Trustee or Custodial Services. A credit union may offer trustee or custodial services as defined at 209 CMR 50.04.

(f) Operational Programs. A credit union may provide payroll services.

209 CMR 50.07(1)(a) is hereby amended by striking the words “significantly undercapitalized” and inserting in place thereof the following words:--

in troubled condition

209 CMR 50.07(3)(a) is hereby amended by striking 209 CMR 50.07(3)(a) in its entirety and inserting in place thereof the following:--

(3) Notice Process to Conduct Certain Activities Relative to CUSOs

(a) General. A credit union that is adequately capitalized and has not been notified that it is in troubled condition or a credit union that is well capitalized and has not been notified that it is in troubled condition may engage in any activity listed under 209 CMR 50.07(4) by providing the Commissioner written notice within ten days after commencing the new activity, provided, however, that the credit union has already received prior approval from the Commissioner to engage in other CUSO activities pursuant to 209 CMR 50.07(1).

209 CMR 50.08(1) is hereby amended by striking the words “significantly undercapitalized” and inserting in place thereof the following words:--

in troubled condition

209 CMR 50.09 is hereby amended by striking 209 CMR 50.09(3)(d) in its entirety and inserting in place thereof the following:--

(d) Purchase and Sale of Loan Portfolios.

1. General. A credit union may purchase, sell or pledge any consumer or mortgage loan made under M.G.L. c. 171 or 209 CMR 50.00 *et seq.*, (hereinafter "eligible obligation") subject to the requirements of 209 CMR 50.09(3)(c).

2. Requirements. All loan purchases, sales or pledges under 209 CMR 50.09(3)(c)1. shall conform to the procedural and substantive requirements of 12 CFR § 701.23(b) governing the purchase of eligible obligations; 12 CFR § 701.23(c) governing the sale of eligible obligations; and 12 CFR § 701.23(d) governing the pledge of eligible obligations.

(e) Additional Powers.

1. General. The authorities provided in 209 CMR 50.09(3)(e) are only for those activities listed. A credit union may engage in other activities if said activities are permitted and determined by the NCUA as incidental powers pursuant 12 CFR § 721 pursuant to regulations, guidelines or written opinions of the General Counsel of the NCUA only if the Commissioner affirmatively determines by regulation or in writing that the activity is reasonably related to an individual power set out in 209 CMR 50.09(3)(e).

2. Notice Process for Certain Activities. A credit union that is adequately capitalized and has not been notified that it is in troubled condition or a credit union that is well capitalized and has not been notified that it is in troubled condition may engage in the activity listed under 209 CMR 50.09(3)(e)4.a. by providing the Commissioner written notice within ten days after commencing the new activity.

3. General Provisions for Trustee or Custodial Services through Outside Vendors. A credit union that is well capitalized and has not been notified that it is in troubled condition may engage in the activity listed under 209 CMR 50.09(3)(e)4.b. by providing the Commissioner written notice within ten days after commencing the new activity.

4. Permissible Activities.

a. Non-Member Monetary Instrument Services. As set forth in NCUA Opinion Letter 02-0250, a credit union, in order to provide monetary instrument services pursuant to 209 CMR 50.09(3)(e)4.a. may engage in the following: may establish a simplified membership program, with a non-dividend bearing membership account; with appropriate limitations may provide wire transfer services as a promotional activity pursuant to 209 CMR 50.11(4)(j)2.g. and 209 CMR 50.09(3)(e)4.a.; and in appropriate circumstances may provide wire transfer services as a charitable activity. A credit union may also offer check cashing and money transfer services to certain nonmembers within the credit union's field-of-membership including the following: the sale of negotiable checks, travelers checks, money orders and other similar money transfer instruments; the cashing of checks and money orders; and the receiving of international and domestic electronic fund transfers.

b. Trustee or Custodial Services through Outside Vendors. A well capitalized credit union may offer trustee or custodial services as defined at 209 CMR 50.04 through outside vendors.

209 CMR 50.10 is hereby amended by striking the words “significantly undercapitalized” and inserting in place thereof the following words:--

in troubled condition

209 CMR 50.11(1) is hereby amended by striking 209 CMR 50.11(1) in its entirety and inserting in place thereof the following:--

(1) A credit union that is well capitalized and has not been notified that it is in troubled condition may engage in the activities listed in 209 CMR 50.11(4)(a), 209 CMR 50.11(4)(b), 209 CMR 50.11(4)(c) and 209 CMR 50.11(4)(i) without filing an application or providing notice to the Commissioner; provided the activities continue to be deemed legally permissible by the Commissioner, and the activities are conducted in accordance with applicable Massachusetts or Federal law.

209 CMR 50.11(2) is hereby amended by striking 209 CMR 50.11(2) in its entirety and inserting in place thereof the following:--

(2) A credit union that is well capitalized and has not been notified that it is in troubled condition and that has strong or satisfactory management as defined at 209 CMR 50.04 may engage in the activities listed in 209 CMR 50.11(4)(d), 209 CMR 50.11(4)(e), 209 CMR 50.11(4)(f), and 209 CMR 50.11(4)(h) without filing an application or providing notice to the Commissioner; provided the activities continue to be deemed legally permissible by the Commissioner, and the activities are conducted in accordance with applicable Massachusetts or Federal law.

209 CMR 50.11(3) is hereby amended by striking 209 CMR 50.11(3) in its entirety and inserting in place thereof the following:--

(3) A credit union that is well capitalized and has not been notified that it is in troubled condition or a credit union that is adequately capitalized and has not been notified that it is in troubled condition may engage in the activities listed in 209 CMR 50.11(4)(g) and 209 CMR 50.11(4)(j) without filing an application or providing notice to the Commissioner; provided the activities continue to be deemed legally permissible by the Commissioner, and the activities are conducted in accordance with applicable Massachusetts or Federal law.

209 CMR 50.11(4) is hereby amended by deleting 209 CMR 50.11(4)(h) in its entirety and inserting in place thereof the following:--

(h) Purchase of Loan Portfolios from Any Federally Insured Credit Union. Notwithstanding the general provisions in M.G.L. c. 171, a credit union meeting the eligibility requirements set forth in 209 CMR 50.11(2) may purchase any auto loan, credit card loan, student loan or mortgage loan from any federally insured credit union as long as the loans are loans that the purchasing credit union is empowered to grant. The credit union is authorized to keep these loans in its portfolio. If a credit union is purchasing the eligible obligations of a liquidating credit union, the loans purchased cannot exceed 5% of the unimpaired capital and surplus of the purchasing credit union.

(i) Purchase and Sale of Loan Portfolios.

1. General. A credit union may purchase, sell or pledge any consumer or mortgage loan made under M.G.L. c. 171 or 209 CMR 50.00 *et seq.*, (hereinafter "eligible obligation") subject to the requirements of 209 CMR 50.11(4)(i)2.

2. Requirements. All loan purchases, sales or pledges under 209 CMR 50.11(4)(i)2. shall conform to the procedural and substantive requirements of 12 CFR § 701.23(b) governing the purchase of eligible obligations; 12 CFR § 701.23(c) governing the sale of eligible obligations; and 12 CFR § 701.23(d) governing the pledge of eligible obligations.

(j) Additional Powers.

1. General. The authorities provided in 209 CMR 50.11(4)(j)2. are only for those activities listed. A credit union may engage in other activities if said activities are permitted and determined by the NCUA as incidental powers pursuant 12 CFR § 721 pursuant to regulations, guidelines or written opinions of the General Counsel of the NCUA only if the Commissioner affirmatively determines by regulation or in writing that the activity is reasonably related to an individual power set out in 209 CMR 50.11(4)(j)2.

A credit union that is adequately capitalized and has not been notified that it is in troubled condition or a credit union that is well capitalized and has not been notified that it is in troubled condition may engage in the activities listed in 209 CMR 50.11(4)(j)2. without filing an application or providing notice to the Commissioner; provided the activities continue to be deemed legally

permissible by the Commissioner, and the activities are conducted in accordance with applicable Massachusetts or Federal law.

2. Permissible Activities.

a. Certification Services. A credit union may provide the following certification services: notary services, signature guarantees, certification of electronic signatures, and share draft certifications.

b. Correspondent services. A credit union may provide the following correspondent services to other federally-insured credit unions: loan processing, loan servicing, member check cashing services, disbursing share withdrawals and loan proceeds, cashing and selling money orders, and automated teller machine deposit services.

c. Electronic Financial Services. A credit union may provide the following electronic financial services: automated teller machines, electronic fund transfers, online transaction processing through a web site, web site hosting services, account aggregation services, and Internet access services to perform or deliver products or services to members.

d. Excess Capacity.

1. Agreements Relative to Excess Capacity in Personnel. A credit union with excess capacity in its personnel may enter into an agreement to permit its employees to work elsewhere subject to the provisions of M.G.L. c. 171, § 19.

2. Sale or Lease of Excess Capacity in Data Processing Equipment or Services. A credit union may sell or lease the excess capacity in data processing equipment or services.

3. Sale or Lease of Excess Capacity in Facilities, Equipment or Office Space. A credit union may sell or lease the excess capacity in facilities, equipment or office space.

e. Financial Counseling. A credit union may provide advice, guidance or services to members to promote thrift or to otherwise assist members on financial matters and may provide the following financial counseling services if said services are provided by the credit union for a fee: income tax preparation service; electronic tax filing for members; counseling regarding estate and retirement planning; investment counseling; and debt and budget counseling.

f. Finder Activities. A credit union may provide the following finder activities by offering products and services to members through outside vendors: through the sale of advertising space on the credit union's web site and account statements and receipts; and selling statistical or consumer financial information to outside vendors to facilitate the sale of their products to the members of the credit union.

g. Marketing Activities. A credit union may engage in the following marketing activities: advertising and other promotional activities such as raffles, membership referral drives, and the purchase or use of advertising.

h. Member Monetary Instrument Services. A credit union may provide the following monetary instrument services: sale and exchange of foreign currency and U.S. commemorative coins; use of a credit union's accounts in foreign financial institutions to facilitate members' transfer and negotiation of checks denominated in foreign currency; and engaging in monetary transfer services for members, provided, however, that under no circumstances can a credit union engage in foreign exchange activities for speculative purpose for its own account.

i. Stored Value Products. A credit union may provide the following stored value products: stored value cards, public transportation tickets, event and attraction tickets, gift certificates, prepaid phone cards, postage stamps, and electronic benefits transfer script, and similar media.

j. Health Savings Accounts. A credit union may offer health savings accounts, as defined at 209 CMR 50.04.