



Commonwealth of Massachusetts

DIVISION OF BANKS

One South Station, 3rd Floor, Boston, MA 02110

April 18, 2008

The Honorable Steven T. James
Clerk of the House of Representatives
State House, Room 145
Boston, Massachusetts 02133

Dear Mr. James:

Enclosed for filing please find the Division of Banks' (the "Division") summary of its proposed amendments to 209 CMR 50.00 *et seq.*, *Parity with Federal Credit Unions*, which are the implementing regulations for Massachusetts General Laws chapter 171, section 6A. A copy of the statute is attached to this letter. This summary and a copy of the proposed amendments, found at Appendix A, are required to be filed with your office pursuant to the statute. The Division's required statement that it has complied with the pertinent provisions of Massachusetts General Laws chapter 30A is found at Appendix B.

A public hearing on these amendments was held pursuant to Massachusetts General Laws chapter 30A on Monday, April 14, 2008 at 10:30 a.m. and written comments were accepted through 5:00 p.m. on Tuesday, April 15, 2008. Oral comments were received from the credit union trade association. Written comments were received from the credit union trade association and one credit union. The comments from the credit union trade association and credit union were in support of the amendments to the regulations.

The Parity with Federal Credit Union regulations had been authorized by the enactment of Chapter 223 of the Acts of 1998, *An Act Relative to State-Chartered Credit Unions* (the "Act"), which authorized the Division to propose regulations that would grant state-chartered credit unions certain expanded powers enjoyed by federally-chartered credit unions. This Act amended Massachusetts General Laws chapter 171, *The Massachusetts Credit Union Act*, by inserting a new section 6A, which permits state-chartered credit unions to exercise certain powers granted to federal credit unions under the Federal Credit Union Act¹. In addition, this provision specifically charged the Commissioner of Banks with the task of promulgating regulations authorizing state-chartered credit unions to exercise such federal credit union powers not otherwise prohibited by Massachusetts law. The Act required the Division to promulgate authorizing regulations subject to Legislative review.

¹ 12 U.S.C. §§1751 *et seq.*

The Act's purpose was to ensure that state-chartered credit unions remain competitive with their federally-chartered credit union counterparts in terms of permissible powers and activities. Toward that end, the parity regulations, and the amendments proposed, grant state-chartered credit unions certain expanded powers enjoyed by federally-chartered credit unions in order to promote "competitive equality" between state-chartered credit unions and federally-chartered credit unions. In addition, the parity regulations cover all adequately-capitalized and eligible credit unions regardless of size, so all eligible small- and medium-sized credit unions are able to take full advantage of the expanded authorities. The Division's goal in proposing these amendments is to continue to offer new authorities in a manner that will make it easier for eligible credit unions to implement and remain competitive.

The parity regulations were not intended to be a definitive or static listing of federally-chartered credit union powers. The Legislature, the Division and the credit union movement all view the federally-chartered credit union parity process as a continuously evolving one. Consequently, it was intended that additional federally-chartered credit union powers would be adopted on a periodic basis to reflect changes in federal credit union laws, official interpretations, and operating conditions.

The Division has undertaken an internal review of the implementation of the parity regulations, and now proposes new amendments. These amendments reflect new authorities requested of the Division prior to and during the comment period, changes offered by the Division as well as several clarifications resulting from the implementation of the existing regulations.

The proposed amendments to 209 CMR 50.00: *Parity with Federal Credit Unions* seek to expand lending and investment authorities for state-chartered credit unions in order to continue to make the state charter more competitive.

As summarized below, the proposed amendments are divided into four general categories: new authorities, amendments making certain authorities easier to implement, the reorganization of provisions of the Incidental Powers and the Regulatory Flexibility Program sections of the regulation, and certain clarifications and technical amendments.

A. New Authorities

1. Authorize credit union service organizations ("CUSOs") to engage in securities brokerage;
2. Increase unsecured and secured personal loans from maximum term of 12 years up to maximum term of 15 years;
3. Authorize indirect mobile home loans;
4. Authorize credit unions to enter into consumer loan participations and non-residential real estate loan participations with CUSOs; and
5. Authorize additional money transfer services for nonmembers.

B. Amendments Making Certain Authorities Easier To Implement

The following amendments would make the specified authorities easier for credit unions to implement:

1. Amend leasing provision previously requiring approval to require notice;
2. Amend purchase and sale of loan portfolios provisions previously requiring approval or notice to require neither approval nor notice;
3. Amend lease of excess capacity provision previously requiring notice to require no notice or approval;
4. Amend specified financial counseling services provision previously requiring approval to require no notice or approval;
5. Amend interest bearing corporate checking accounts provision previously requiring notice to require no notice or approval;
6. Amend treasury tax and loan depositories provision previously requiring notice to require no notice or approval;
7. Amend provision relative to mortgage loans written in accordance with certain mortgage loan programs of public instrumentalities, so-called soft second mortgage programs, previously requiring notice to require no notice or approval;
8. Increase term of consumer loans from 6 years to 12 years in 209 CMR 50.14 and 209 CMR 50.15; and
9. Addition of 97% loan-to-value and 100% loan-to-value mortgages to 209 CMR 50.14 and 209 CMR 50.15.

C. Reorganization of Incidental Powers and Regulatory Flexibility Program

The provisions under Incidental Powers at 209 CMR 50.07 and the Regulatory Flexibility Program at 209 CMR 50.13 would be combined with other provisions of the regulation. The provisions of the Incidental Powers section would be combined with other provisions based on whether they require approval, notice, or neither approval nor notice. All the Regulatory Flexibility provisions would be combined with other provisions in the section of authorities requiring no approval or notice, as follows.

1. Approval Authorities

The following, which were formerly included under Incidental Powers at 209 CMR 50.07, are now included under the approval authorities at 209 CMR 50.06(3)(p):

- (1) Certain correspondent services;
- (2) Certain finders activities, specifically, insurance, mutual fund, and annuities through outside vendors, and additional finders activities;
- (3) Loan-related products, specifically, debt cancellation and debt suspension agreements;
- (4) Trustee or custodial services as defined at 209 CMR 50.04 through outside vendors; and
- (5) Trustee or custodial services as defined at 209 CMR 50.04.

2. Notice Authorities

The following, which were formerly included under Incidental Powers at 209 CMR 50.07, are now included under the notice authorities at 209 CMR 50.09(3):

- (1) Non-member monetary instrument services; and
- (2) Trustee or custodial services through outside vendors for well-capitalized credit unions.

3. Activities Requiring No Application or Notice

The following, which were formerly included under the Regulatory Flexibility Program at 209 CMR 50.13 or Incidental Powers at 209 CMR 50.07, are now included under the activities requiring no application or notice at 209 CMR 50.12(4):

- (1) Interest bearing corporate checking accounts;
- (2) Treasury tax and loan depositories;
- (3) Investments in land, building, improvements and equipment;
- (4) Purchase of loan portfolios from any federally insured credit union;
- (5) Purchase and sale of loan portfolios;
- (6) Mortgage loans written in accordance with certain mortgage loan programs of public instrumentalities;
- (7) Certification services;
- (8) Correspondent services;
- (9) Electronic financial services;
- (10) Excess capacity;
- (11) Financial counseling;
- (12) Certain finder activities;
- (13) Marketing activities;
- (14) Member monetary instrument services;

- (15) Stored value products; and
- (16) Health savings accounts.

D. Clarifications and Technical Corrections

Following are various clarifications and technical amendments:

1. Technical correction to update a National Credit Union Administration (“NCUA”) citation in leasing authority;
2. Clarify correspondent services provision formerly under Incidental Powers to limit to federally-insured credit unions; and
3. Technical corrections to mortgage authorities in 209 CMR 50.14 and 209 CMR 50.15 eliminating cross reference that requires prior approvals.

There was one additional proposal relative to authority for certain investments to fund a credit union’s employee benefit plan submitted to the Division prior to the hearing. This proposal requested authority for a credit union to purchase investments that would otherwise be impermissible if the investment was directly related to the credit union’s obligation or potential obligation to fund an employee benefit plan. The Division considered this proposal, but did not adopt it as part of the proposed amendments.

SECTION-BY-SECTION SUMMARY

A section-by-section summary of the proposed amendments to 209 CMR 50.00 *et seq.* and additional comments follow.

50.06 Application Process to Conduct Certain Activities

50.06(3)(c) Credit Union Service Organizations

50.06(3)(c)2.m. Permissible Activities

50.06(3)(c)3. Prohibited Activities

These amendments authorize securities brokerage services as a permissible activity for CUSOs at 209 CMR 50.06(3)(c)2.m..

The amendments also delete the existing prohibition, which was a prohibition of securities brokerage services excluding third party arrangements with independent vendors, at 209 CMR 50.06(3)(c)3.b.. The remaining prohibitions, which are for fixed asset services, travel agency services, and real estate brokerage, would be renumbered as 209 CMR 50.06(3)(c)3.a. and 209 CMR 50.06(3)(c)3.b., respectively.

50.06(3)(e) Consumer Loans

This amendment increases unsecured and secured personal loans from maximum term of 12 years up to maximum term of 15 years. The amendment reflects the same increase in the maximum term at the federal level, which became effective in 2007.

50.06(3)(h)2. Leasing

This amendment changes the leasing provision to update a reference to a NCUA interpretive ruling that has been withdrawn, and replaces it with a reference to a subsequently promulgated NCUA regulation. The NCUA withdrew its Interpretive Ruling and Policy Statement 83-3, *FCU Leasing of Personal Property to Members*, which is referenced in the Division's leasing regulation. This Interpretive Ruling was replaced by a regulation, 12 CFR Part 714, *Leasing*.

50.06(3)(i) 20-Year Loans

50.06(3)(i)3. Indirect Mobile Home Loans
50.06(3)(i)2. through 50.06(3)(i)7., inclusive

These amendments add approval authority for 20-year indirect mobile home loans at 209 CMR 50.06(3)(i)3.. In addition, these amendments renumber the remaining provisions of 209 CMR 50.06(3)(i) and update internal cross references.

50.06(3)(m) Consumer Loan Participations

This amendment would authorize credit unions to enter into consumer loan participations with CUSOs.

50.06(3)(n) Non-Residential Real Estate Loan Participations

This amendment would authorize credit unions to enter into non-residential real estate loan participations with CUSOs.

50.06(3)(p) Additional Powers

The following, which were formerly included under Incidental Powers at 209 CMR 50.07, are now included under the approval authorities at 209 CMR 50.06(3)(p):

- Certain correspondent services at 209 CMR 50.06(3)(p)2.a.;
- Certain finders activities, specifically, insurance, mutual fund, and annuities through outside vendors, and additional finders activities at 209 CMR 50.06(3)(p)2.b.;

- Loan-related products, specifically, debt cancellation agreements and debt suspension agreements at 209 CMR 50.06(3)(p)2.c.;
- Trustee or custodial services as defined at 209 CMR 50.04 through outside vendors at 209 CMR 50.06(3)(p)2.d.; and
- Trustee or custodial services as defined at 209 CMR 50.04 at 209 CMR 50.06(3)(p)2.e.

50.07 Incidental Powers

The provisions of the Incidental Powers section are combined with other provisions based on whether they require approval, notice, or neither approval nor notice. The provisions are reorganized as follows: the provisions that require approval are now at 209 CMR 50.06(3)(p); the provisions that require notice are now at 209 CMR 50.09(3)(e); and the provisions that require neither notice nor approval are now at 209 CMR 50.12(4). There is no change in the eligibility requirements for these authorities.

50.09 Notice Process to Conduct Certain Activities

50.09(3)(d) Leasing

This amendment makes leasing, currently an approval authority, also a notice authority.

50.09(3)(e) Additional Powers

50.09(3)(e)4.a. Non-Member Monetary Instrument Services

This amendment would authorize credit unions to offer check cashing and money transfer services to certain nonmembers within the credit union's field-of-membership. This authority would include: (1) selling negotiable checks, travelers checks, money orders and other similar money transfer instruments; (2) cashing checks and money orders; and (3) receiving international and domestic electronic fund transfers. This provision was formerly under Incidental Powers, and retains the eligibility requirement that a credit union be adequately capitalized and not notified that it is significantly undercapitalized.

50.09(3)(e)4.b. Trustee or Custodial Services Through Outside Vendors

This amendment would combine this provision, formerly under Incidental Powers, with the notice provisions at 209 CMR 50.09, and would retain the eligibility requirement that a credit union be well-capitalized and not notified that it is significantly undercapitalized.

50.12 Activities Requiring No Application or Notice

This section is amended to include provisions of Incidental Powers that require neither application nor notice, as well as the provisions of the Regulatory Flexibility Program. There are

no changes to any of the eligibility criteria. Certain provisions, as noted below, that formerly required approval or notice, have been amended to require neither.

The following provisions requiring neither notice nor approval have been added:

- Interest bearing corporate checking accounts at 209 CMR 50.09(3)(a) and formerly at 209 CMR 50.13(2)(c) now also at 209 CMR 50.12(4)(d);
- Treasury tax and loan depositories at 209 CMR 50.09(3)(b) and formerly at 209 CMR 50.13(2)(d) now also at 209 CMR 50.12(4)(e);
- Investments in land, building, improvements, and equipment formerly at 209 CMR 50.13(2)(a) now at 209 CMR 50.12(4)(f);
- Purchase of loan portfolios from any federally insured credit union formerly at 209 CMR 50.13(2)(b) now at 209 CMR 50.12(4)(g);
- Purchase and sale of loan portfolios provisions at 209 CMR 50.06(3)(l) and 209 CMR 50.09(3)(c) now also at 209 CMR 50.12(4)(h);
- Mortgage loans written in accordance with certain mortgage loan programs of public instrumentalities, so-called soft second mortgage programs, previously requiring notice at 209 CMR 50.16 now at 209 CMR 50.12(4)(i);
- Certification services formerly at 209 CMR 50.07(5)(a)1. now at 209 CMR 50.12(4)(j)2.a.;
- Specified correspondent services formerly at 209 CMR 50.07(5)(b)1. now clarified to be to other federally-insured credit unions at 209 CMR 50.12(4)(j)2.b.;
- Electronic financial services formerly at 209 CMR 50.07(5)(c)1. now at 209 CMR 50.12(4)(j)2.c.;
- Excess capacity in personnel and data processing formerly at 209 CMR 50.07(5)(d)1. and excess capacity in facilities, lease or office space formerly requiring notice at 209 CMR 50.07(5)(d)2. now at 209 CMR 50.12(4)(j)2.d.;
- Financial counseling formerly at 209 CMR 50.07(5)(e)1. and specified financial counseling services for a fee formerly requiring approval at 209 CMR 50.07(5)(e)2. now at 209 CMR 50.12(4)(j)2.e.;
- Certain specified finder activities formerly at 209 CMR 50.07(5)(f)1. now at 209 CMR 50.12(4)(j)2.f.;
- Marketing activities formerly at 209 CMR 50.07(5)(i)1. now at 209 CMR 50.12(4)(j)2.g.;
- Member monetary instrument services formerly at 209 CMR 50.07(5)(h)2. now at 209 CMR 50.12(4)(j)2.h.;

- Stored value products formerly at 209 CMR 50.07(5)(j) now at 209 CMR 50.12(4)(j)2.i.; and
- Health savings accounts formerly at 209 CMR 50.07(5)(m) now at 209 CMR 50.12(4)(j)2.j..

50.13 *Regulatory Flexibility Program*

The provisions of this section have been combined with 209 CMR 50.12, as noted above. There is no change in the eligibility requirements for these provisions.

50.14 *Activities Requiring No Notice Or Application For Credit Unions That Have Previously Received Approval Pursuant To 209 CMR 50.00*

50.14(2)(a) *Consumer Loans*

This amendment would increase the maximum term of consumer loans from 6 years to 12 years in this provision of the parity regulations, which permits credit unions that have already received parity approval to engage in specified activities without notice or application.

50.14(2)(l) *97% Loan-to-Value Residential Mortgage Loan Authority*

This amendment adds 97% loan-to-value residential mortgage loan authority at 209 CMR 50.14(2)(l).

50.14(2)(m) *100% Loan-to-Value Residential Mortgage Loan Authority*

This amendment adds 100% loan-to-value residential mortgage loan authority at 209 CMR 50.14(2)(m).

In addition, various technical amendments were made throughout 209 CMR 50.14 as follows: at 209 CMR 50.14(1) to clarify that no approval is required within 50.14 regardless of any cross reference to another provision of the regulations that requires approval; at 209 CMR 50.14(2)(e) through 209 CMR 50.14(2)(h), inclusive, to reflect amendments to 209 CMR 50.06(3)(i); and at 209 CMR 50.14(2)(j) through 209 CMR 50.14(2)(l), inclusive, to further clarify that no approval is required regardless of any cross reference to another provisions of the regulations that requires approval.

50.15 Additional Notice Authorities For Credit Unions That Have Not Previously Received Approval Pursuant To 209 CMR 50.00

50.15(3)(a) Consumer Loans

This amendment would increase the maximum term of consumer loans from 6 years to 12 years in this provision of the parity regulations, which permits credit unions that have not already received parity approval to engage in specified activities by providing notice.

50.15(3)(k) 97% Loan-to-Value Residential Mortgage Loan Authority

This amendment adds 97% loan-to-value residential mortgage loan authority at 209 CMR 50.15(3)(k).

50.15(3)(l) 100% Loan-to-Value Residential Mortgage Loan Authority

This amendment adds 100% loan-to-value residential mortgage loan authority at 209 CMR 50.15(3)(l).

In addition, various technical amendments were made throughout 209 CMR 50.15 as follows: at 209 CMR 50.15(1) to clarify that no approval is required within 50.15 regardless of any cross reference to another provision of the regulations that requires approval; at 209 CMR 50.15(2)(d) through 209 CMR 50.15(3)(f), inclusive, to reflect amendments to 209 CMR 50.06(3)(i); and at 209 CMR 50.15(3)(g) through 209 CMR 50.15(3)(i), inclusive, to further clarify that no approval is required regardless of any cross reference to another provision of the regulations that requires approval.

50.16 Mortgage Loans Written in Accordance with Certain Mortgage Loan Programs of Public Instrumentalities

The provisions of 209 CMR 50.16, relative to so-called soft second mortgage programs, were combined with 209 CMR 50.12(4)(i) and resulted in the elimination of 209 CMR 50.16.

Please contact me at (617) 956-1510 or the Division's Legal Unit at (617) 956-1520, if there are any questions regarding these proposed regulations.

Very truly yours,

Steven L. Antonakes
Commissioner of Banks