



The Commonwealth of Massachusetts

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April 29, 2004

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 Tuesday, April 20, 2004 at 11:00 a.m. and written comments were accepted through 5:00 p.m. on that same date. Oral comments were received from the credit union trade association. Written comments were received from the credit union trade association and four credit unions. All comments were in support of 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. The Act was signed into law on August 6, 1998 and became effective on November 4, 1998. 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 permitted 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 their federal counterparts. 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 them. 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.

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 industry all view the federally-chartered credit union parity process as an evolving one. Consequently, it was intended that additional federally-chartered credit union powers would be adopted on a periodic basis to reflect changed in federal credit union laws, official interpretations, and operating conditions.

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

The proposed 2004 amendments to the parity regulations would authorize nine new classes of authorities, in addition to numerous clarifications and technical amendments. Although some new proposed authorities require the approval of the Division, a significant number of the proposed amendments require notice for eligible credit unions. There is also a newly proposed Regulatory Flexibility Program that would require neither approval from nor notice to the Division. The proposed new authorities are listed below, and all proposed amendments are described in greater detail in the section-by-section summary that follows.

The proposed amendments for new authorities include the following:

- Eleven notice authorities for eligible credit unions that have previously received approval under the parity regulations:
 - Personal loans up to \$30,000 for a term up to 6 years;
 - Direct automobile financing up to 100% of the value of the collateral up to \$75,000 for a term up to 6 years;
 - Indirect automobile financing up to 100% of the value of the collateral up to \$75,000 for a term up to 6 years;
 - Lines of credit and credit cards up to \$25,000;
 - Home improvement loans up to \$125,000 for a term up to 20 years;
 - Manufactured home loans up to \$125,000 for a term up to 20 years;

- Boat, camper, and trailer loans up to \$100,000 for a term up to 20 years;
- First lien residential mortgages up to \$900,000 for a term up to 40 years;
- Second lien or non-purchase residential-closed end home equity loans up to \$250,000 for a term up to 20 years;
- 95% loan-to-value for first lien 40-year residential mortgage loans up to \$900,000, and 20-year closed-end and open-end second lien and non-purchase residential mortgage loans up to \$250,000.
- Ten notice authorities for eligible credit unions that have not previously received approval under the parity regulations, as follows:
 - Personal loans up to \$20,000 for a term up to 6 years;
 - Direct automobile financing up to 100% of the value of the collateral up to \$60,000 for a term up to 6 years;
 - Lines of credit and credit cards up to \$20,000;
 - Home improvement loans up to \$75,000 for a term up to 20 years;
 - Manufactured home loans up to \$75,000 for a term up to 20 years;
 - Boat, camper, and trailer loans up to \$75,000 for a term up to 20 years;
 - First lien residential mortgages up to \$500,000 for a term up to 40 years;
 - Second lien or non-purchase residential 20-year closed-end home equity loans up to \$125,000;
 - Second lien or non-purchase residential open-end home equity mortgage loans up to \$125,000; and
 - 95% loan-to-value for first lien 40-year residential mortgage loans up to \$500,000, and 20-year closed-end and open-end second lien and non-purchase residential mortgage loans up to \$125,000.
- Regulatory Flexibility Program permitting eligible credit unions, without application or notice, to engage in the following activities:
 - Invest in land, building, improvements, and equipment up to \$300,000 for one parcel of real estate or purchase of equipment per transaction; and
 - Purchase of the following loans from federally-chartered credit unions:
 - Automobile loans;
 - Credit card loans;

- Student loans; and
 - Mortgage loans.
- Authority for non-residential real estate loan participations.
 - Authority for direct trustee and custodial services.
 - Authority for trustee and custodial services through outside vendors.
 - Authority for trust services for credit union service organizations.
 - Authority for 100% loan-to-value first lien residential mortgages, with credit enhancement.
 - New notice authority for mortgage loan programs of public instrumentalities.
 - In addition, there were numerous technical corrections, including but not limited to provisions to reflect passage of legislation in 2002 permitting credit union insurance sales and an increase in the term of 97% loan-to-value first lien mortgages to 40 years.

In its Notice of Public Hearing, the Division requested specific comment on whether to include provisions set forth at 12 CFR §703.5(b), relative to discretionary control over investments and investment advisers. Other proposals, including but not limited to, non-member deposits and incidental powers standard of review were also raised at the hearing or during the comment period. The Division considered these proposals, but did not adopt them as part of the proposed amendments.

SECTION-BY-SECTION SUMMARY AND DISCUSSION

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

50.04 Definitions

Summary

These amendments add the definitions of “trustee or custodial services” and “strong or satisfactory management” to the parity regulations.

Discussion

The definition of “trustee or custodial services” is set forth in the NCUA’s Incidental Powers regulation at 12 CFR §721.2(1), which currently states that “Trustee or custodial services are services which a credit union or a vendor is authorized to act under any written trust instrument or custodial agreement created or organized in the United States and forming part of a pension or profit-sharing plan, as authorized under the Internal Revenue Code. These services may include acting as a trustee or custodial for member retirement and education accounts.”

The definition of “strong or satisfactory management” requires that the following three criteria be met: the credit union’s management rating must meet the definitions set forth in Division of Banks Regulatory Bulletin 1.1-101, Appendix A; NCUA Letter to Credit Unions No. 161; and NCUA Letter to Credit Unions No. 167. “Strong or satisfactory management” is one of the eligibility criteria for three new sets of powers proposed in these amendments: Regulatory Flexibility Program at 209 CMR 50.13; Additional Notice Authorities For Credit Unions That Have Previously Received Approval Pursuant To 209 CMR 50.00 *et seq.* at 209 CMR 50.14; and Additional Notice Authorities For Credit Unions That Have Not Previously Received Approval Pursuant to 209 CMR 50.00 *et seq.* at 209 CMR 50.15.

50.06 Application Process to Conduct Certain Activities

50.06(3)(c) Investments in Credit Union Service Organizations

Summary

The first amendment deletes the prohibition against investing in insurance companies. The second amendment deletes the prohibition against engaging in insurance brokerage or agency services excluding third party arrangements with independent vendors.

Discussion

These amendments update the parity regulations to reflect passage of Chapter 454 of the Acts of 2002, *An Act Relative to Credit Unions* (the “Act”). The Act provides authority for state- or federally-chartered credit unions the power to sell insurance products in the Commonwealth, and gives credit unions the power to sell insurance products either directly or indirectly through an affiliate established for that purpose or a third party agreement. The Act defines “affiliate” as a CUSO as established pursuant to 12 U.S.C. s. 1786a(e)(1) or by the parity regulations. The Commissioner is required to approve a general plan of operation submitted by a state-chartered credit union and credit union sales would be conducted in accordance with regulations promulgated by the Commissioner. State-chartered credit unions approved by the Division must subsequently obtain an insurance producer license from the Division of Insurance.

A related amendment to delete other prohibitions against insurance sales is discussed at 209 CMR 50.13, below.

50.06(3)(c) CUSOs -- Third-Party Trust and Trust-Related Services

Summary

This amendment provides new authority for third-party trust and trust-related services for CUSOs. The services It adds the definition of “trustee or custodial services” set forth by the NCUA for CUSOs at 12 CFR §712.5(p): acting as administrator for prepaid legal service plans; acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity; and trust services.

Discussion

This amendment provides the same authority for third-party trust-related services available to federally-chartered CUSOs.

50.06(3)(j) Residential Mortgages

50.06(3)(j)2. Closed-end Home Equity Mortgages

Summary

This is a technical correction to 209 CMR 50.06(3)(j)2., amending the last reference to be 209 CMR 50.06(3)(k)1.

Discussion

This reference appears as 209 CMR 50.06(k)1. in the current regulations.

50.06(3)(j)3. Open-end Home Equity Mortgages

Summary

This is a technical correction to 209 CMR 50.06(3)(j)3., amending the last reference to be 209 CMR 50.06(3)(k)1.

Discussion

This reference appears as 209 CMR 50.06(k)1. in the current regulations.

50.06(3)(k) Loan-To-Value Residential Mortgage Loans

50.06(3)(k)2. 97% Loan to Value Residential Mortgage Loans

Summary

The first amendment to 209 CMR 50.06(3)(k)2 increases the term of 97% loan-to-value first lien residential mortgage loans to 40 years. The second amendment deletes the existing reference to mortgage loan programs of public instrumentalities.

Discussion

The first amendment includes language referencing 209 CMR 50.06(3)(j)1., which provides the authority for the 40-year term for first lien residential mortgages. As currently drafted, the statutory term limitation of 35 years is in effect.

The second amendment deleted the reference to mortgage loan programs of public instrumentalities in light of the new proposed notice authority for mortgage loan programs of public instrumentalities at 209 CMR 50.16, discussed below.

50.03(3)(k)3. 100% Loan to Value Residential Mortgage Loans

Summary

This amendment creates new authority subject to approval for first lien 100% loan-to-value residential mortgages, with credit enhancement.

Discussion

At the hearing and during the comment period, the mortgage lien provisions of the parity regulations were reviewed at length in light of the proposal relative to mortgage loans written in accordance with certain mortgage loan programs of public instrumentalities. This new authority, providing 100% loan-to-value with credit enhancement, is proposed to expand the ability of credit unions to meet the needs of members in the current real estate market. A related new authority, relative to mortgages written in accordance with the mortgage loan programs of public instrumentalities, is proposed at 209 CMR 50.16. A determination was also made to maintain the current first lien 97% loan-to-value authority at 209 CMR 50.03(k)2., with a technical amendment to increase the term to 40 years, and a further amendment to delete the references to mortgage loan programs of public instrumentalities from that section.

50.06(3)(n) Non-Residential Mortgage Community Development Loan Participations

Summary

This amendment provides new authority subject to approval to permit a credit union, with other state or federally-chartered credit unions, to invest in or lend to a loan participation 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.

Discussion

This amendment is based in part on the provisions set forth in Division of Banks Opinion Letter No. 00-126.

50.07 Incidental Powers

50.07(1) General

Summary

This is a technical amendment rewriting this section to be one sentence instead of two.

50.07(2)(b) Application Process to Conduct Certain Activities -- General Provisions for Trustee or Custodial Services

Summary

This amendment adds new authority requiring approval for direct and third-party trustee or custodial services, based on the level of the credit union's capitalization. Approval is necessary for both well-capitalized and adequately-capitalized credit unions seeking to offer direct trustee or custodial services pursuant to 209 CMR 50.07(5)(l). Approval is also necessary for adequately-capitalized credit unions seeking to offer trustee or custodial services through outside vendors pursuant to 209 CMR 50.07(5)(k)2.

50.07(2)(c) Application Process to Conduct Certain Activities -- Application

Summary

This is a technical amendment changing the reference to this paragraph to 209 CMR 50.07(2)(c).

Discussion

This paragraph is 209 CMR 50.07(2)(b) in the current regulations.

50.07(3)(b) Notice Process to Conduct Certain Activities -- General Provisions for Trustee or Custodial Services through Outside Vendors

Summary

This amendment adds new notice authority for well-capitalized credit unions to offer trustee or custodial services through outside vendors pursuant to 209 CMR 50.07(5)(k)2. Trustee or custodial services are defined at 209 CMR 50.04, above.

50.07(3)(c) Notice Process to Conduct Certain Activities – Notice

Summary

The first technical amendment changes the reference to this paragraph to 209 CMR 50.07(3)(c). The second technical amendment adds a reference to 209 CMR 50.07(3)(b) to this paragraph.

50.07(5)(k) Permissible Activities -- Trustee or Custodial Services through Outside Vendors

Summary

This amendment adds new authority for third-party trustee or custodial services under the Incidental Powers regulations. Credit unions that are well-capitalized would have notice authority. Credit unions that are adequately-capitalized would require approval.

Discussion

Trustee or custodial services are defined at 209 CMR 50.04, above.

50.07(5)(l) Permissible Activities -- Trustee or Custodial Services

Summary

This amendment adds new authority for direct trustee or custodial services under the Incidental Powers regulations. This authority requires approval for both well-capitalized and adequately-capitalized credit unions.

Discussion

Trustee or custodial services are defined at 209 CMR 50.04, above.

50.13 Regulatory Flexibility Program

Summary

The first amendment repeals the current 209 CMR 50.13(1) through (3) in its entirety.

The second amendment would create a new Regulatory Flexibility Program for well-capitalized, well-managed credit unions for the following authorities, which would not require an application or notice to the Division:

- Investment in land, building, improvements, and equipment up to \$300,000 for one parcel of real estate or purchase of equipment per transaction.

- Purchase of any of the following loans from any federally-insured credit unions as long as the loans are loans that the purchasing credit union is empowered to grant:
 - Automobile loans
 - Credit card loans
 - Student loans
 - Mortgage loans

A credit union must be well-capitalized and meet the definition of strong or satisfactory management as set forth at 209 CMR 50.04, above, to be eligible for the Regulatory Flexibility Program.

Discussion

The first amendment repeals the current 209 CMR 50.13: Unauthorized Activities. The three provisions of this section are all relative to insurance sales activities, and its repeal reflects passage of Chapter 454 of the Acts of 2002, authorizing insurance sales activities for credit unions.

50.14 Additional Notice Authorities For Credit Unions That Have Previously Received Approval Pursuant To 209 CMR 50.00 *et seq.*:

Summary

This amendment would provide 11 additional notice authorities for eligible credit unions that have previously received approval under one of the following provisions of the parity regulations: 209 CMR 50.06, 209 CMR 50.07, or 209 CMR 50.11.

Eligibility requirements would include that a credit union:

- Be adequately or well-capitalized;
- Meet definition of “strong or satisfactory management” at 209 CMR 50.4;
- Meet the requirements of 209 CMR 50.05 relative to financial and managerial resources, policy requirements, and have a CRA rating of least “Satisfactory.”

50.14(a) provides general provisions, including eligibility and notice requirements.

50.14(b) sets forth the notice provision.

50.14(c) sets forth the 11 new notice authorities for eligible credit unions that have previously received approval pursuant to the parity regulations are as follows:

- (a) Personal loans up to \$30,000 for a term up to 6 years;
- (b) Direct automobile financing up to 100% of the value of the collateral up to \$75,000 for a term up to 6 years;
- (c) Indirect automobile financing up to 100% of the value of the collateral up to \$75,000 for a term up to 6 years;

- (d) Lines of credit and credit cards up to \$25,000;
- (e) Home improvement loans up to \$125,000 for a term up to 20 years;
- (f) Manufactured home loans up to \$125,000 for a term up to 20 years;
- (g) Boat, camper, and trailer loans up to \$100,000 for a term up to 20 years;
- (h) First lien residential mortgages up to \$900,000 for a term up to 40 years;
- (i) Second lien or non-purchase residential-closed end home equity loans up to \$250,000 for a term up to 20 years;
- (j) Second lien or non-purchase residential open-end home equity mortgage loans up to \$250,000; and
- (k) 95% loan-to-value for first lien 40-year residential mortgage loans up to \$900,000, and 20-year closed-end and open-end second lien and non-purchase residential mortgage loans up to \$250,000.

Discussion

These credit unions would still have to meet the standards established in this new authority. They have previously demonstrated that they have sufficient policies and procedures in place.

The Division notes that any prior approval under the parity regulations enables an eligible credit union to provide notice for new authorities under this section. The approval does not have to be for the same type of authority. For example, an eligible credit union that previously had received approval for consumer loans under parity would be eligible for the notice authority relative to direct automobile loans.

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

Summary

This amendment would provide 10 additional notice authorities for eligible credit unions that have not previously received approval under one of the following provisions of the parity regulations: 209 CMR 50.06, 209 CMR 50.07, or 209 CMR 50.11.

Eligibility requirements would include that a credit union:

- Be adequately or well-capitalized;
- Meet definition of “strong or satisfactory management” at 209 CMR 50.04;
- Meet the requirements of 209 CMR 50.05 relative to financial and managerial resources, policy requirements, and have a CRA rating of least “Satisfactory.”

50.15(a) provides general provisions, including eligibility and notice requirements.

50.15(b) sets forth the notice provision.

50.15(c) sets forth the 10 new notice authorities for eligible credit unions that have previously received approval pursuant to the parity regulations are as follows:

- (a) Personal loans up to \$20,000 for a term up to 6 years;
- (b) Direct automobile financing up to 100% of the value of the collateral up to \$60,000 for a term up to 6 years;
- (c) Lines of credit and credit cards up to \$20,000;
- (d) Home improvement loans up to \$75,000 for a term up to 20 years;
- (e) Manufactured home loans up to \$75,000 for a term up to 20 years;
- (f) Boat, camper, and trailer loans up to \$75,000 for a term up to 20 years;
- (g) First lien residential mortgages up to \$500,000 for a term up to 40 years;
- (h) Second lien or non-purchase residential 20-year closed-end home equity loans up to \$125,000;
- (i) Second lien or non-purchase residential open-end home equity mortgage loans up to \$125,000; and
- (j) 95% loan-to-value for first lien 40-year residential mortgage loans up to \$500,000, and 20-year closed-end and open-end second lien and non-purchase residential mortgage loans up to \$125,000.

Discussion

The purpose of this amendment is to streamline the process for eligible credit unions and allow them utilize the authorities offered with notice only.

50.16 Notice Authority for Mortgage Loan Programs of Public Instrumentalities

Summary

This provision creates notice authority for adequately- and well-capitalized to offer first and subsequent lien residential mortgages as part of mortgage loan programs of public instrumentalities created by the Commonwealth, its municipalities, or the federal government for the purpose of financing and expanding the supply of residential mortgages or affordable housing.

Discussion

This new authority relative to mortgages written in accordance with the mortgage loan programs of public instrumentalities is proposed in response to comments received at the hearing and during the comment period, and other inquiries made to the Division. Under the existing regulations only first lien mortgage loan programs of public instrumentalities of the Commonwealth were specified and allowed up to a maximum of 97%. The proposed amendment expands authority to state, municipal or federal home loan programs and covers both first and any subsequent lien programs established for the purpose of financing and expanding the supply of residential mortgages or affordable housing. The Division believes that this provision coupled with the 100% financing authority also provided in these proposed amendments will allow credit unions to create or participate in both private and public programs to increase residential housing and ownership.

The Joint Committee on Banks and Banking and its staff may contact me at (617) 956-1510 or the Division's Legal Unit at (617) 956-1520, if they have any questions regarding these proposed regulations.

Very truly yours,



Steven L. Antonakes
Commissioner of Banks