

Appendix A

Proposed Amendments to 209 CMR 50.00: Parity with Federal Credit Unions

Overview

The purpose of 209 CMR 50.00 *et seq.* (Parity Regulations) is to implement G.L. c. 171, s. 6A, which authorizes the Commissioner of Banks to promulgate regulations to grant state-chartered credit unions certain expanded powers in parity with federally-chartered credit unions. The proposed amendments primarily reorganize and amend the Incidental Powers authorities, and restore them to a single section, proposed 209 CMR 50.09. In addition, there are two new authorities proposed under Incidental Powers, discussed below. The proposed amendments restructure and streamline procedural requirements by allowing state-chartered credit unions to exercise certain authorities that previously required approval or notice to do so without approval or notice.

Following is an overview and a section-by-section summary of the proposed amendments.

New Authorities

The new authorities set forth in the proposed amendments are as follows:

1. Authority to apply for approval for certain activities that the federal regulator, the National Credit Union Administration (NCUA), has deemed approved or deemed acceptable in writing to be an Incidental Power, and which is reasonably related to an individual power as set forth in the Parity Regulations; and
2. Authority to apply for approval for certain activities that the NCUA has deemed approved or deemed acceptable in writing as Incidental Powers but which are not included in the Parity Regulations.

Reduced Regulatory Burden

Some of the major amendments to reduce regulatory burden are set forth below:

1. Authority for shared branch offices is amended from approval to notice;
2. Authority for community development investments is amended from approval to requiring neither approval nor notice;
3. Authority for low-income designated credit unions and non-low income designated credit unions to accept non-member deposits is amended from notice to requiring neither approval or notice;
4. Authority for certain correspondent services for internal audits is amended from approval to requiring neither approval nor notice;
5. Authority to establish charitable donation accounts is amended from notice to requiring neither approval or notice;
6. Authority for certain correspondent services for other services to credit unions such as loan processing is amended from approval to requiring neither approval nor notice;

7. Authority for operational programs to offer payroll services is amended from notice to requiring neither approval nor notice; and
8. Authority to provide trustee or custodial services is amended from an approval authority to requiring neither approval nor notice.

Section-by-Section Summary

It should be noted that citations below are to the proposed amendments to the Parity Regulations.

209 CMR 50.05: Application Process to Conduct Certain Activities

The following authorities now have the following citations:

- *Temporary Branch Offices*: This authority is now at 209 CMR 50.05(3)(a).
- *Employee Benefits Funded by Impermissible Investments*: This authority is now at 209 CMR 50.05(3)(b).
- *Pilot Investment Program*: This authority is now at 209 CMR 50.05(3)(d).
- *Secondary Capital*: This authority is now at 209 CMR 50.05(3)(e).
- *Private Label Investments*: This authority is now at 209 CMR 50.03(f).

209 CMR 50.06: Notice Process to Conduct Certain Activities

- *Investments in Land, Building, Improvements, and Equipment*: This authority for investments in land, building, improvements and equipment of more than \$1,000,000 is now at 209 CMR 50.06(3)(a).
- *Shared Branch Offices*: This authority to establish a operate a branch office on a shared basis with one or more credit unions or federal credit unions, which was formerly an approval authority, is now a notice authority at 209 CMR 50.06(3)(a).

209 CMR 50.07: Activities Requiring No Application or Notice

- *Investments in Land, Building, Improvements, and Equipment*: This authority is now at 209 CMR 50.07(2)(h).
- *Community Development Investments*. This authority, which was formerly an approval authority, is now a notice authority at 209 CMR 50.07(3)(i).
- *Non-Member Deposits*:
 - o *Low Income Designated Credit Unions*: This amendment provides authority for a credit union designated as low-income by the Division and the NCUA to accept deposits for any purpose from any source up to the aggregate of 20% of its existing

deposits or \$3 million, whichever is greater. This authority, which was formerly a notice authority, is now at 209 CMR 50.07(2)(j)1.

- *Non-Low Income Designated Credit Unions:* This amendment provides authority for a credit union that is not designated as low-income to accept deposits for any purpose from any source up to the aggregate of 20% of its existing deposits or \$3 million, whichever is greater. This authority, which was formerly a notice authority, is now at 209 CMR 50.07(2)(j)2.

209 CMR 50.09: Incidental Powers

As in the Parity Regulations in general, the Incidental Powers section is set up in three general sections: provisions requiring notice, provisions requiring neither application nor notice, and provisions requiring approval from the Division.

- *General:* A credit union that is well or adequately capitalized and has not been notified that it is in troubled condition to engage in the activities in this section, provided the activities continue to be deemed legally permissible by the Commissioner and are conducted in accordance with applicable Massachusetts or federal law. This provision is at 209 CMR 50.09(1).
- *Notice Process to Conduct Certain Activities:*
 - *General:* In addition to the above criteria, written notice must be provided 30 days prior to commencing the new activity. The Commissioner may modify or limit any activity for safety and soundness reasons, and will provide notification of such limitations within the 30 day notice period. A credit union may ask to waive, and the Commissioner may waive the remaining notice period. This provision is at 209 CMR 50.09(2)(a).
 - *Notice:* The notice must be in writing, and must include a complete description of the activity conducted, the credit union's investment in such activity, and a representation and undertaking that the activity will be conducted in accordance with Massachusetts and federal law. Any credit union filing notice pursuant to this provision is deemed to have agreed to conduct the activity in a manner consistent with applicable guidelines. The Commissioner may require other information. This provision is at 209 CMR 50.09(2)(b).
- *Activities Subject to Notice:*
 - *Certain Correspondent Services -- Internal Audits:* A credit union may perform internal audits for other credit unions. This was formerly an approval authority, and is now at 209 CMR 50.09(2)(c)1.
 - *Non-Member Monetary Instrument Services:* This authority is now at 209 CMR 50.09(2)(c)2.
 - *Certain Finders Activities:* A credit union may make insurance, mutual funds and annuities available to members subject to Massachusetts and federal law. A credit union may also provide finder activities. This provision was updated to clarify that insurance sales activities must also be in accordance with the provisions of G.L. c. 171, § 75B and 209 CMR 49.00 *et seq.* This provision is now at 209 CMR 50.09(3)(c)3.

- *Activities Requiring No Application or Notice*

General: A credit union that is well or adequately capitalized and not notified that it is in troubled condition may engage in the activities without filing an application or providing notice, 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. This provision is at 209 CMR 50.09(3)a.

Permissible Activities:

- *Certification Services:* This provision is now at 209 CMR 50.09(3)(b)1.
- *Charitable Contributions and Donations:* This provision is now at 209 CMR 50.09(3)(b)2.
- *Charitable Donation Accounts:* This provision, which authorizes the establishment of charitable donation accounts, was formerly a notice provision, and is now at 209 CMR 50.09(3)(b)3.
- *Correspondent Services – Other Services:* This provision, relative to a credit union providing certain correspondent services to other credit unions, including but not limited to 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, was formerly an approval authority. It is now at 209 CMR 50.09(3)(b)4.
- *Electronic Financial Services:* This provision is now at 209 CMR 50.09(b)5.
- *Excess Capacity:*
 - *Agreements Relative to Excess Capacity in Personnel:* This provision is now at 209 CMR 50.09(3)(b)6.a.
 - *Sale of Lease of Excess Capacity in Data Processing Equipment or Services:* This provision is now at 209 CMR 50.09(3)(b)6.b.
 - *Sale or Lease of Excess Capacity in Facilities, Equipment, or Office Space:* This provision is now at 209 CMR 50.09(3)(b)6.c.
- *Financial Counseling:* This provision is now at 209 CMR 50.09(3)(b)7.
- *Finder Activities:* This provision, relative to offering products and services to members through outside vendors, including but not limited to advertising space on the credit union's website, is now at 209 CMR 50.09(3)(b)8.
- *Loan Related Products:* This provision, relative to debt cancellation agreements and debt suspension agreements, is now at 209 CMR 50.09(3)(b)9.
- *Marketing Activities:* This provision is now at 209 CMR 50.09(3)(b)10.
- *Member Monetary Services:* This provision is now at 209 CMR 50.09(3)(b)11.

- *Operational Programs:* This provision, which was formerly a notice provision relative to payroll services, is now at 209 CMR 50.09(3)(b)12.
- *Stored Value Products:* This provision is now at 209 CMR 50.09(3)(b)13.
- *Trustee or Custodial Services:* This provision, which was formerly an approval authority, is now at 209 CMR 50.09(3)(b)14.

- ***Approval Process for Additional Incidental Powers***

- *Expedited Approval Process for Additional Incidental Powers Related to Those Set Forth in 209 CMR 50.09(2) and 209 CMR 50.09(3) and Otherwise Approved by the NCUA*

- *General:* A credit union that is well or adequately capitalized and has not been notified that it is in troubled condition may engage in other activities if they are permitted and determined by the NCUA to be incidental powers pursuant to 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 as set out in 209 CMR 50.09(2) or 209 CMR 50.09(3). This provision is at 209 CMR 50.09(3)(a)1.
- *Federal Authority:* The requested activity must be one that is deemed approved or deemed acceptable by the NCUA as set forth in regulations, guidelines, or written opinions of the General Counsel of the NCUA, as an additional incidental power pursuant to 12 CFR Part 721, and shall also be subject to any conditions the Commissioner may require. This provision is at 209 CMR 50.09(3)(a)2.
- *Application Process:* The credit union shall determine whether the requested activated is permitted and determined by the NCUA to be an incidental power pursuant to 12 CFR § 721 and as set forth in 209 CMR 50.09(4)(a)1. The application shall provide a complete description of the proposed activity, written policies, and a representation and undertaking that the activity will be conducted in accordance with Massachusetts and federal law. The Commissioner may require additional information. The application shall be deemed approved by the Commissioner 30 days after the filing is received by the Commissioner, unless the credit union is notified prior to that date that it is not eligible for expedited review. This provision is at 209 CMR 50.09(3)(a)3.

- *Approval Process of Additional Incidental Powers Otherwise Approved by the NCUA*

- *General:* A credit union that is well or adequately capitalized, and has not been notified that it is in troubled condition, may engage in additional activities approved by the NCUA as incidental powers under 12 CFR Part 721, but not included in 209 CMR 50.09(2) or 209 CMR 50.09(3), by submitting an

application to and receiving approval from the Commissioner. This provision is at 209 CMR 50.09(4)(a).

- *Federal Authority:* The requested authority must be one that is deemed approved or deemed acceptable by the NCUA as set forth in regulations, guidelines, or written opinions of the General Counsel of the NCUA, as an additional incidental power pursuant to the provisions of 12 CFR Part 721, and shall also be subject to any conditions the Commissioner may require. This provision is at 209 CMR 50.09(4)(b).

- *Application Process.* A credit union shall apply to the Commissioner in writing, and determine whether the activity is authorized for federal credit unions pursuant to 209 CMR 50.09(4)(b), and shall also describe the activity, and the credit union's plan for implementing the proposed activity. The credit union shall also submitted the written policies as well as a representation and undertaking that the activity will be conducted in accordance with Massachusetts and federal law. The application shall provide any other information the Commissioner may require.