Net worth means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles. Retained earnings consists of undivided earnings, regular reserves, and any other appropriations designated by management or regulatory authorities. This means that only undivided earnings and appropriations of undivided earnings are included in net worth. For low income-designated credit unions, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims, including claims of creditors, shareholders and the NCUSIF. For any credit union, net worth does not include the allowance for loan and lease losses account.

[FR Doc. 05–24285 Filed 12–20–05; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

RIN 3133–AD14

Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is issuing its rule on the purchase of assets and assumption of liabilities by federally-insured credit unions to clarify which transfers of assets or accounts require approval by the NCUA Board.

DATES: This rule is effective January 20, 2006.

FOR FURTHER INFORMATION CONTACT: Moisette Green, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

In July 2005, the Board published its proposed amendment to clarify the scope of § 741.8, along with a request for comments on projected amendments to §§ 712.3, 712.4 and 741.3, with a 60-day comment period. 70 FR 43794 (July 29, 2005). The proposal identified certain transactions that would require NCUA approval and some exceptions.

The purpose of this rule is to clarify the scope of § 741.8. This regulation identifies certain transactions that require NCUA approval and some exceptions. Confusion in the prior regulation resulted from the fact that the Federal Credit Union Act (Act) required NCUA approval for transactions that were not addressed specifically in the regulation. The Act requires prior approval for an insured credit union to ''acquire the assets of, or assume liability to pay any member accounts in, any other insured credit union.'' 12 U.S.C. 1785(b)(3).

B. Discussion

The Act, in sections 205(b)(1) and (3), requires FICUs to obtain NCUA approval for various transactions. 12 U.S.C. 1785(b)(1), (3). Subsection (b)(1) concerns transactions with credit unions and other institutions not insured by the National Credit Union Share Insurance Fund (NCUSIF). Subsection (b)(3) concerns transactions between FICUs. In addition to § 741.8, these sections in the Act provide the authority for other rules, including Part 708b, which addresses mergers generally. Section 741.8 also implements these sections to the extent that it identifies certain transactions that require NCUA approval.

The regulatory history of § 741.8 indicates the Board did not intend to require approval for certain transactions. In 1990, when § 741.8 was first proposed and adopted, NCUA was particularly concerned about FICUs acquiring loans or assuming responsibility for member or customer accounts from privately insured credit unions or any financial institution that was not insured by the NCUSIF. NCUA was concerned because this was a period marked by the failure of many privately insured credit unions as well as the failure of other financial institutions.

Prior to this final rule, § 741.8 was silent on transfers between two FICUs. It required any FICU to receive Board approval before either purchasing or acquiring loans or assuming or receiving an assignment of deposits, shares, or liabilities from any credit union that is not federally insured or from any non-credit union financial institution. The rule only excluded the purchase of particular student loans and real estate secured loans and the assumption of assets associated with member retirement accounts or in which the FICU has a security interest from the approval requirement.

The regulatory history of § 741.8 addresses this apparent gap. In 1990, when first proposed, § 741.8 would have covered transfers of assets, including fixed assets like a brick and mortar branch office, in addition to transfers of loans and share liabilities and between FICUs. 55 FR 49059 (November 26, 1990). The final version of the rule, however, eliminated the requirement for Board approval of transfers between FICUs. The NCUA Board determined transfers between FICUs did not materially increase risk to the NCUSIF. 56 FR 35808 (July 29, 1991). Additionally, the Board believed transfers between FICUs should not unduly affect the safety and soundness of FICUs because of regulations applicable to these credit unions, the examination of FICUs for compliance with these regulations, and enforcement of the regulations by appropriate regulators. *Id.* Accordingly, NCUA did not require the approval of these individual transactions. These determinations hold true today, so the Board issues this final rule to clarify the scope of § 741.8.

This rule clarifies that transactions involving the sale or purchase of loans or other assets between FICUs do not require NCUA approval. NCUA notes that other regulations may limit or otherwise regulate those transactions, for example, the member business lending rule, the fixed asset rule, the eligible obligations rule, and so forth. 12 CFR part 723, §§ 701.36, 701.23. For those transactions that do require approval, the amendment describes what a credit union seeking approval should submit and where a request for approval should be sent.

NCUA recognizes that in one narrow circumstance, FISCUs will need approval under § 741.8 when FCUs would not. Specifically, FISCUs must apply for NCUA approval to purchase loans from credit union service organizations (CUSOs). Section 741.8 does not exempt transactions between a FICU and a CUSO. An FCU's purchase of a member loan from any source is governed by § 701.23, the eligible obligations rule. That rule does not apply to FISCUs. The differences between the statutory and regulatory authority of FCUs and state-chartered credit unions present this unique problem. Section 741.8 is a safety and soundness regulation and, therefore, NCUA will review transactions involving FISCUs where, as in this limited circumstance, there is no exemption.

NCUA is also aware that other Federal or State laws may apply to the transfer of loans between FICUs. This rule does not address the application of those laws. NCUA expects that FICUs that will exercise due diligence and ensure that they comply with all laws or contractual obligations to third parties before the transfer of loans to other FICUs are completed.

This rule continues to except from coverage loan purchases involving the

packaging of student loans and real estate secured loans by a federal credit union (FCU) under to § 701.23(b) of the NCUA regulations for sale on the secondary market. Secondary market standards promote safety and soundness in these activities and, additionally, the timing of these transactions is often complex, and agency review could disadvantage FCUs' ability to compete in doing these transactions.

C. Comments on the Rulemaking

NCUA received 27 comments regarding the proposed rule and request for comments. Two state supervisory authorities (SSAs), 13 credit unions, nine trade associations, two law firms, and one consultant commented on the proposed rule and request for comments. Fourteen commenters did not address the proposed amendments to § 741.8, and focused only on the request for comments on possible changes to §§ 712.3, 712.4, and 741.3. Comments on possible amendments of the rules governing non-conforming investments and investments in CUSOs by FISCU §§ 712.3, 712.4, and 741.3 will be covered in a proposed rule if one is presented in the future.

Thirteen commenters supported the proposed amendment to the purchase and assumptions rule. 12 CFR 741.8. Five commenters suggested NCUA modify § 741.8(c) to require a credit union to submit its request for approval of a purchase or assumption transaction to the regional office with jurisdiction for the state where the credit union is headquartered instead of where it operates. The Board has adopted this suggestion and modified the regulatory language accordingly.

An SSA requested NCUA permit FICUs to purchase loan participations from financial institutions insured by the Federal Deposit Insurance Corporation without specific Board approval to track the SSA's state law. The SSA stated the NCUA proposal adds administrative burden to credit unions and is unnecessary due to the SSA's examination and supervision of its state-chartered credit unions. The SSA further commented the current proposal places additional and duplicate burdens on FISCUs that do not apply to its state-chartered banks and thrifts.

NCUA believes supervision of transactions between FICUs and other financial institutions is necessary because of the unique nature of credit unions, including different authorities and limits for their operations as compared to other financial institutions. Other financial institutions are regulated differently than FICUs and have powers that FICUs do not have. The purchase of assets or assumption of liabilities from a privately-insured credit union or federally-insured financial institution will affect the acquiring FICU financially and, also, may raise issues of legal permissibility. The Board will continue its oversight of these transactions.

A trade association, while supporting the amendment, questioned whether the proposal would require a credit union to obtain approval for a merger under both Part 708 and § 741.8. This rule covers purchase and assumption transactions by FICUS; a credit union should not ask approval for a merger under this section, which is covered in Part 708b. Mergers are excluded from coverage under § 741.8 because they involve a credit union acquiring another credit union or financial institution, which will, after the acquisition, no longer exist. The rule covers transactions in which a credit union acquires a portion of another credit union or financial institution's assets or liabilities, with a continuation of the transferor.

The same trade association also suggested other insured financial institutions, including privately-insured credit unions and federally-insured banks, should be considered able to purchase from or sell to a FICU under the approval exception. This rule does not address transactions in which FICUs sell assets or liabilities and, as discussed, the Board has determined it will retain its oversight of FICU purchases from entities other than FICUs.

Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, or those with less than ten million dollars in assets. The rule is grounded in NCUA concerns about the safety and soundness of the transactions and their potential effects on FICUs and the NCUSIF. NCUA has knowledge of only four transactions that would be covered by the rule in two years. Accordingly, the Board determines and certifies that this rule does not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

B. Paperwork Reduction Act

Section 741.8 contains information collection requirements. As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), NCUA submitted a copy of the rule to the Office of Management and Budget (OMB) for its review and approval. OMB approved the Collection of Information on October 14, 2005 under Control Number 3133–0169.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule may have an occasional direct affect on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule may supersede provisions of State law, regulation or approvals.

Since the rule might lead to conflicts between the NCUA and state financial institution regulators on occasion, NCUA requested comments on means and methods to eliminate, or at least minimize, potential conflicts in this area. NCUA received comments from SSAs concerned about possible inequitable treatment of and the additional administrative burden on FISCUs under this rule. FISCUs may be required to obtain NCUA approval for some purchase or assumptions transactions and not state regulator approval. Additionally, FISCUs may need approval for transactions that FCUs may complete under Part 701 of the NCUA regulations. SSAs suggested exempting transfers between FICUs and other federally-insured financial institutions or setting insurance regulations for FISCUs apart from insurance rules applicable to FCUs.

NCUA's authority to regulate FICUs and administer the NCUSIF derives from the FCU Act. The protection of the NCUSIF and FICUs are concerns of national scope. In light of this, and the small number of applications expected, the Board determines that the final rule will not have substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. However, in considering applications from FISCUs, NCUA will lend substantial weight to recommendations from State regulators.

D. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Information and Regulatory Affairs, an office within OMB, has determined that, for purposes of SBREFA, this is not a major rule.

E. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 741

Insurance requirements.

By the National Credit Union Administration Board on December 15, 2005.

Mary Rupp,

Secretary of the Board.

■ For the reasons stated above, NCUA amends 12 CFR part 741 as follows:

PART 741—REQUIREMENTS FOR INSURANCE

■ 1. The authority citation for part 741 is amended to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

■ 2. Amend § 741.8 to read as follows:

§ 741.8 Purchase of assets and assumption of liabilities.

(a) Any credit union insured by the National Credit Union Share Insurance Fund (NCUSIF) must receive approval from the NCUA before purchasing loans or assuming an assignment of deposits, shares, or liabilities from:

(1) Any credit union that is not insured by the NCUSIF;

(2) Any other financial-type institution (including depository institutions, mortgage banks, consumer finance companies, insurance companies, loan brokers, and other loan sellers or liability traders); or

(3) Any successor in interest to any institution identified in paragraph (a)(1) or (a)(2) of this section.

(b) Approval is not required for:

(1) Purchases of student loans or real estate secured loans to facilitate the packaging of a pool of loans to be sold or pledged on the secondary market under § 701.23(b)(1)(iii) or (iv) of this chapter or comparable state law for state-chartered credit unions, or purchases of member loans under § 701.23(b)(1)(i) of this chapter or comparable state law for state-chartered credit unions;

(2) Assumption of deposits, shares or liabilities as rollovers or transfers of member retirement accounts or in which a federally-insured credit union perfects a security interest in connection with an extension of credit to any member; or

(3) Purchases of assets, including loans, or assumptions of deposits, shares, or liabilities by any credit union insured by the NCUSIF from another credit union insured by the NCUSIF, except a purchase or assumption as a part of a merger under Part 708b.

(c) A credit union seeking approval under paragraph (a) of this section must submit a letter to the regional office with jurisdiction for the state where the credit union is headquartered. A corporate credit union seeking approval under paragraph (a) of this section must submit a letter to the Office of Corporate Credit Unions. The letter must request approval and state the nature of the transaction and include copies of relevant transaction documents. The regional director will make a decision to approve or disapprove the request as soon as possible depending on the complexity of the proposed transaction. Credit unions should submit a request for approval in sufficient time to close the transaction.

[FR Doc. 05–24284 Filed 12–20–05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22627; Directorate Identifier 2005–NM–156–AD; Amendment 39–14425; AD 2005–26–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes. This AD requires measuring to detect migration of the lower gimbal pin and inspecting for other discrepancies of the horizontal stabilizer trim actuator (HSTA). This AD also requires replacing or modifying the HSTA, as applicable. This AD results from reports of failure of the lower gimbal pin of the HSTA. We are issuing this AD to prevent migration of the lower gimbal pin of the HSTA, which could result in loss of the horizontal stabilizer and consequent loss of control of the airplane.

DATES: This AD becomes effective January 25, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 25, 2006.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC.

Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Daniel Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes. That NPRM was published in the **Federal Register** on October 6, 2005 (70 FR 58355). That NPRM proposed to require measuring to