



Comment Call (15-6) NCUA Regulatory Review 2015

Impact: Federal and State Chartered Credit Unions

Relevant Department: CEO, COO, CFO

Priority Level: *Medium*

Background

The National Credit Union Administration (NCUA) reviews all of its existing regulations every three years. The NCUA's Office of General Counsel maintains a rolling review schedule that identifies one-third of the NCUA's existing regulations for review each year and provides notice to the public of those regulations under review so they public may comment on possible amendments or improvements to the rules.

Based on the NCUA's Office of General Counsel notification the following regulations will be reviewed in 2014.

700	Definitions
701.1	Federal Credit Union Chartering, Field of Membership Modifications and Conversions
701.2	Federal Credit Union Bylaws
701.3	Member Inspection of Credit Union Books, Records and Minutes
701.4	General Authorities and Duties of Federal Credit Union Directors
701.6	Fees Paid by Federal Credit Unions
701.14	Change in Official or Senior Executive Officer in Credit Unions that are Newly Chartered or are in Troubled Condition
701.19	Benefits for Employees of Federal Credit Unions
701.20	Suretyship and Guaranty
701.21	Loans and Lines of Credit to Members
701.22	Loan Participations
701.23	Purchase, Sale, and Pledge of Eligible Obligations
701.24	Refund of Interest
701.26	Credit Union Service Contracts
701.30	Services for Nonmembers within the Field of Membership
701.31	Nondiscrimination Requirements
701.32	Payment on Shares by Public Units and Nonmembers
701.33	Reimbursement, Insurance, and Indemnification of Officials and Employees
701.34	Designation of Low-Income Status; Acceptance of Secondary Capital Accounts by Low-Income Designated Credit Unions
701.35	Share, Share Draft, and Share Certificate Accounts
701.36	Federal Credit Union Ownership of Fixed Assets
701.37	Treasury Tax and Loan Depositories; Depositories and Financial Agents of the Government
701.38	Borrowed Funds from Natural Persons
701.39	Statutory Lien
Appendix	Appendix A to Part 701 – Federal Credit Union Bylaws
Appendix	Appendix B to Part 701 – Chartering and Field of Membership Manual

702	Capital Adequacy
703	Investment and Deposit Activities
704	Corporate Credit Unions
705	Community Development Revolving Loan Fund Access for Credit Unions
707	Truth in Savings
708a	Bank Conversions and Mergers
708b	Mergers of Federally-Insured Credit Unions; Voluntary Termination or Conversion of Insured Status
709	Involuntary Liquidation of Federal Credit Unions and Adjudication of Creditor Claims Involving Federally Insured Credit Unions in Liquidation
710	Voluntary Liquidation

The proposal to review the regulations can be found here:

<http://www.ncua.gov/Legal/Documents/Regulations/RegulatoryReview.pdf>

Comments on the regulations are due by *August 2, 2015*.

Summary of Proposed Rules

Definitions (700.1 – 700.2)

The definitions apply to terms used throughout the NCUA regulations unless the context indicates otherwise.

Many additional definitions appear in the parts where the terms are used. Terms included in this section include:

- Act
- Administration
- Board
- Credit Union
- Insolvency
- Cash value of assets
- Liabilities
- Net Worth
- Paid-in and unimpaired capital and surplus
- Regional Director
- Regional Office
- State
- Troubled condition
- Unimpaired capital and surplus

Federal Credit Union Chartering, Field of Membership Modifications and Conversions (701.1)

National Credit Union Administration policies concerning chartering, field of membership modifications, and conversions, also known as the Chartering and Field of Membership Manual, are set forth in appendix B.

Federal Credit Union Bylaws (701.2)

Federal credit unions must operate in accordance with their approved bylaws and are published as Appendix A to part 701.

Member Inspection of credit union books, records and minutes (701.3)

A group of members of a Federal credit union has the right, upon submission of a petition to the credit union, to inspect and copy non-confidential portions of various credit union records. Members do not have the right to

inspect any portion of the books, records or minutes of a Federal credit union under a number of circumstances detailed within this section.

General Authorities and Duties of Federal Credit Union Directors

The board of directors is responsible for the general direction and control of the affairs of each Federal credit union. While a Federal credit union board of directors may delegate the execution of operational functions to Federal credit union personnel, the ultimate responsibility of each Federal credit union's board of directors for that Federal credit union's direction and control is non-delegable

Fees paid by Federal Credit Unions (701.6)

Each calendar year or as otherwise directed by the Board, each Federal credit union shall pay to the Administration for the current National Credit Union Administration fiscal year (January 1 to December 31) an operating fee in accordance with a schedule as fixed from time to time by the National Credit Union Administration Board based on the total assets of each Federal credit union as of December 31 of the preceding year or as otherwise determined pursuant to paragraph (b) of this section. The operating fee is determined based on total assets less the assets created on the books of a natural person Federal credit union by investments made in a corporate credit union under the Credit Union System Investment Program or the Credit Union Homeowners Affordability Relief Program

Change in Official or Senior Executive Officer in Credit Unions that are Newly Chartered or are in Troubled Condition (701.14)

Section 212 of the Federal Credit Union Act (12 U.S.C. 1790a) sets forth conditions under which a credit union must notify NCUA in writing of any proposed changes in its board of directors, committee members or senior executive staff. The regulation only applies in cases of newly chartered credit unions and credit unions in troubled condition.

Benefits for Employees of Federal Credit Unions (701.19)

A federal credit union may provide employee benefits, including retirement benefits, to its employees and officers who are compensated in conformance with the Act and the bylaws, individually or collectively with other credit unions. The kind and amount of these benefits must be reasonable given the federal credit union's size, financial condition, and the duties of the employees.

Suretyship and Guaranty (701.20)

This section authorizes a federal credit union to enter into a suretyship or guaranty agreement as an incidental powers activity. This section does not apply to the guaranty of public deposits or the assumption of liability for member accounts. A suretyship binds a federal credit union with its principal to pay or perform an obligation to a third person while under a guaranty agreement a federal credit union agrees to satisfy the obligation of the principal only if the principal fails to pay or perform.

Loans to Members and Lines of Credit to Members (701.21)

Section 701.21 complements the provisions of section 107(5) of the Federal Credit Union Act (12 U.S.C. 1757(5)) authorizing Federal credit unions to make loans to members and issue lines of credit (including credit cards) to members. Section 107(5) of the Act contains limitations on matters such as loan maturity, rate of interest, security, and prepayment penalties. Section 701.21 interprets and implements those provisions. In addition, §701.21 states the NCUA Board's intent concerning preemption of state laws, and expands the authority of Federal credit unions to enforce due-on-sale clauses in real property loans.

Loan Participations (701.22)

This section establishes the requirements a federally insured credit union must satisfy to purchase a participation in a loan. This section applies only to a federally insured credit union's purchase of a loan participation where the borrower is not a member of that credit union and where a continuing contractual obligation between the seller and purchaser is contemplated. Generally, a federal credit union's purchase of all

or part of a loan made to one of its own members, subject to a limited exception for certain well capitalized federal credit unions in §701.23(b)(2), where no continuing contractual obligation between the seller and purchaser is contemplated, is governed by §701.23 of this part. Federally insured, state-chartered credit unions are required by §741.225 of this chapter to comply with the loan participation requirements of this section.

Purchase Sale and Pledge of Eligible Obligations (701.23)

This section governs a federal credit union's purchase, sale, or pledge of all or part of a loan to one of its own members, subject to a limited exception for certain well capitalized federal credit unions, where no continuing contractual obligation between the seller and purchaser is contemplated. For purchases of eligible obligations, except as described in paragraph (b)(2) of this section, the borrower must be a member of the purchasing federal credit union before the purchase is made. A federal credit union may not purchase a non-member loan to hold in its portfolio.

Refund of Interest (701.24)

The board of directors of a Federal credit union may authorize an interest refund to members who paid interest to the credit union during any dividend period and who are members of record at the close of business on the last day of such dividend period. Interest refunds may be made for a dividend period only if dividends on share accounts have been declared and paid for that period.

Credit Union Service Contracts (701.26)

A Federal credit union may act as a representative of and enter into a contractual agreement with one or more credit unions or other organizations for the purpose of sharing, utilizing, renting, leasing, purchasing, selling, and/or joint ownership of fixed assets or engaging in activities and/or services which relate to the daily operations of credit unions. Agreements must be in writing, and shall advise all parties subject to the agreement that the goods and services provided shall be subject to examination by the NCUA Board to the extent permitted by law.

Services for Nonmembers within the Field of Membership (701.30)

Federal credit unions may provide the following services to persons within their fields of membership, regardless of membership status:

- (a) Selling negotiable checks including travelers checks, money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers and remittance transfers, as defined in section 919 of the Electronic Fund Transfer Act); and
- (b) Cashing checks and money orders for a fee.

Nondiscrimination Requirements (701.31)

A Federal credit union may not deny a real estate-related loan, nor may it discriminate in setting or exercising its rights pursuant to the terms or conditions of such a loan, nor may it discourage an application for such a loan, on the basis of the race, color, national origin, religion, sex, handicap, or familial status.

Payment on Shares by Public Units and Nonmembers (701.32)

A Federal credit union may, to the extent permitted under Section 107(6) of the Act and this section, receive payments on shares, (regular shares, share certificates, and share draft accounts) from public units and political subdivisions thereof (as those terms are defined in §745.1) and nonmember credit unions, and to the extent permitted under the Act, this section and §701.34, receive payments on shares (regular shares, share certificates, and share draft accounts) from other nonmembers.

Reimbursement, Insurance, and Indemnification of Officials and Employees (701.33)

Payment (by reimbursement to an official or direct credit union payment to a third party) for reasonable and proper costs incurred by an official in carrying out the responsibilities of the position to which that person has been elected or appointed, if the payment is determined by the board of directors to be necessary or appropriate in order to carry out the official business of the credit union, and is in accordance with written policies and procedures, including documentation requirements, established by the board of directors. Such payments may include the payment of travel costs for officials and one guest per official;

Provision of reasonable health, accident and related types of personal insurance protection, supplied for officials at the expense of the credit union: *Provided*, that such insurance protection must exclude life insurance; must be limited to areas of risk, including accidental death and dismemberment, to which the official is exposed by reason of carrying out the duties or responsibilities of the official's credit union position; must cease immediately upon the insured person's leaving office, without providing residual benefits other than from pending claims, if any; except that a credit union must comply with federal and state laws providing departing officials the right to maintain health insurance coverage at their own expense and

Indemnification. (1) A Federal credit union may indemnify its officials and current and former employees for expenses reasonably incurred in connection with judicial or administrative proceedings to which they are or may become parties by reason of the performance of their official duties

Designation of Low Income Status; Acceptance of Secondary Capital Accounts by Low-Income Designated Credit Unions (701.34)

Based on data obtained through examinations, NCUA will notify a federal credit union that it qualifies for designation as a low-income credit union if a majority of its membership qualifies as low-income members. A federal credit union that wishes to receive the designation must notify NCUA in writing within 90 days of receipt of any NCUA notifications.

Share, Share Draft, and Share Certificate Accounts (701.35)

Federal credit unions may offer share, share draft, and share certificate accounts in accordance with section 107(6) of the Act (12 U.S.C. 1757(6)) and the board of directors may declare dividends on such accounts as provided in section 117 of the Act (12 U.S.C. 1763)

A Federal credit union shall accurately represent the terms and conditions of its share, share draft, and share certificate accounts in all advertising, disclosures, or agreements, whether written or oral

A Federal credit union may, consistent with this section, parts 707 and 740 of this subchapter, other federal law, and its contractual obligations, determine the types of fees or charges and other matters affecting the opening, maintaining and closing of a share, share draft or share certificate account. State laws regulating such activities are not applicable to federal credit unions.

Federal Credit Union Ownership of Fixed Assets (701.36)

If a federal credit union has \$1,000,000 or more in assets, the aggregate of all its investments in fixed assets must not exceed five percent of its shares and retained earnings. NCUA may waive this aggregate limit.

Treasury Tax and Loan Depositories; Depositories and Financial Agents of the Government (701.37)

Subject to regulation of the United States Treasury Department, a Federal credit union may serve as a Treasury tax and loan depository, a depository of Federal taxes, a depository of public money, and a financial agent of the United States Government. In serving in these capacities, a Federal credit union may maintain the accounts defined in subsection (a), pledge collateral, and perform the services described under United States Treasury Department regulations for institutions acting in these capacities.

Borrowed Funds from Natural Persons (701.38)

Federal credit unions may borrow from a natural person, provided:

(1) The borrowing is evidenced by a signed promissory note which sets forth the terms and conditions regarding maturity, prepayment, interest rate, method of computation, and method of payment;

(2) The promissory note and any advertisement for such funds contains conspicuous language indicating that:

(i) The note represents money borrowed by the credit union;

(ii) The note does not represent shares and, therefore, is *not* insured by the National Credit Union Share Insurance Fund.

Statutory Lien (701.39)

Statutory lien means the right granted by section 107(11) of the Federal Credit Union Act, 12 U.S.C. 1757(11), to a federal credit union to establish a right in or claim to a member's shares and dividends equal to the amount of that member's outstanding financial obligation to the credit union, as that amount varies from time to time.

Appendix A to Part 701 – Federal Credit Union Bylaws

Complete FCU bylaws

Appendix B to Part 701 – Chartering and Field of Membership Manual

Complete Chartering and Field of Membership Guidance and Manual

Capital Adequacy (702)

The express purpose of prompt corrective action under section 1790d is to resolve the problems of federally-insured credit unions at the least possible long-term loss to the National Credit Union Share Insurance Fund. This part carries out the purpose of prompt corrective action by establishing a framework of mandatory and discretionary supervisory actions, applicable according to a credit union's net worth ratio, designed primarily to restore and improve the net worth of federally-insured credit unions

Investment and Deposit Activities (703)

Part 703 identifies certain investments and deposit activities permissible under the Act and prescribes regulations governing those investments and deposit activities on the basis of safety and soundness concerns. Additionally, part 703 identifies and prohibits certain investments and deposit activities. Investments and deposit activities that are permissible under the Act and not prohibited or otherwise regulated by part 703 remain permissible for Federal credit unions.

Corporate Credit Unions (704)

This part establishes special rules for all federally insured corporate credit unions. Non-federally insured corporate credit unions must agree, by written contract, to both adhere to the requirements of this part and submit to examinations, as determined by NCUA, as a condition of receiving shares or deposits from federally insured credit unions. This part grants certain additional authorities to federal corporate credit unions. Except to the extent that they are inconsistent with this part, other provisions of NCUA's Rules and Regulations (12 CFR chapter VII) and the Federal Credit Union Act apply to federally chartered corporate credit unions and federally insured state-chartered corporate credit unions to the same extent that they apply to other federally chartered and federally insured state-chartered credit unions, respectively.

Community Development Revolving Loan Fund Access for Credit Unions (705)

This part describes how NCUA makes money available to credit unions from its Community Development Revolving Loan Fund (Fund). NCUA administers the Fund and makes both loans and technical assistance grants to credit unions in accordance with the eligibility criteria and other qualifications, subject to the terms

and conditions set out in this part. All loans and technical assistance grants made under this part are subject to funds availability and NCUA's discretion.

Truth in Savings (707)

The purpose of this part is to enable credit union members and potential members to make informed decisions about accounts at credit unions. This part requires credit unions to provide disclosures so that members and potential members can make meaningful comparisons among credit unions and depository institutions.

This part applies to all credit unions whose accounts are either insured by, or eligible to be insured by, the National Credit Union Share Insurance Fund, except for any credit union that has been designated as a corporate credit union by the National Credit Union Administration and any credit union that has \$2 million or less in assets, after subtracting any nonmember deposits, and is determined to be non-automated by the National Credit Union Administration. In addition, the advertising rules in §707.8 apply to any person who advertises an account offered by a credit union, including any person who solicits any amount from any other person for placement in a credit union.

Bank Conversions and Mergers (708a)

A credit union, with the approval of its members, may convert to a mutual savings bank or a savings association that is in mutual form without the prior approval of the NCUA, subject to applicable law governing mutual savings banks and savings associations and the other requirements of this part.

Mergers of Federally-Insured Credit Unions; Voluntary Termination or Conversion of Insured Status (708b)

Subpart A of this part prescribes the procedures for merging one or more credit unions with a continuing credit union where at least one of the credit unions is federally-insured.

Subpart B of this part prescribes the procedures and notice requirements for termination of federal insurance or conversion of federal insurance to nonfederal insurance, including termination or conversion resulting from a merger.

Subpart C prescribes required forms for use in conversion of federal insurance to non-federal insurance.

Involuntary Liquidation of Federal Credit Unions and Adjudication of Creditor Claims Involving Federally Insured Credit Unions in Liquidation (709)

The rules and procedures in this part apply to charter revocations of federal credit unions under 12 U.S.C. 1787(a)(1)(A), (B), the involuntary liquidation and adjudication of creditor claims in all cases involving federally-insured credit unions, the treatment by the Board as conservator or liquidating agent of financial assets transferred in connection with a securitization or participation or of public funds held by a federally-insured credit union, and the allowance of prepayment fees to Federal Home Loan Banks under specified conditions. Remaining sections of this part are applicable to all federally insured credit unions. This part does not apply to share insurance claims arising out of the liquidation of a federally insured credit union. Insurance claims are decided pursuant to part 745 of this chapter.

Voluntary Liquidation (710).

This part describes the requirements that must be followed to accomplish the voluntary liquidation of a Federal credit union. Federally insured state credit unions are only subject to the notification requirement provided in §710.9; voluntary liquidation is to be accomplished in accordance with state law or procedures established by the state regulatory authority

Conclusion

NCUA's goal is to ensure all of their regulations are clearly articulated and easily understood. With that being said, the NCUA encourages public comment on all aspects of the rules up for review in 2014, including substantive suggestions for regulatory changes.

Comment Letters

Please submit a Comment Letter to:

Regulatory Review 2015
Office of General Counsel
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

E-mail: OGCMAIL@NCUA.GOV, include – “Regulatory Review (2014)” in the subject line.

Please submit to the MCUL a copy of your response to the attention of:

Kirk Hanna
Vice President Government Affairs
Michigan Credit Union League & Affiliates
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Livonia, MI 48152-7097

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We Appreciate Your Response