

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

RIN: 3133-AF11

Joint Ownership Share Accounts

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) proposes to amend its share insurance regulation governing the requirements for a share account to be separately insured as a joint account by the National Credit Union Share Insurance Fund (NCUSIF). Specifically, the proposed rule would provide an alternative method to satisfy the membership card or account signature card requirement necessary for insurance coverage (signature card requirement). Under the proposal, even if an insured credit union cannot produce membership cards or account signature cards signed by the joint accountholders, the signature card requirement could be satisfied by information contained in the account records of the insured credit union establishing co-ownership of the share account. For example, the signature card requirement could be satisfied

by the credit union having issued a mechanism for accessing the account, such as a debit card, to each co-owner or evidence of usage of the joint share account by each co-owner.

DATES: Comments must be received on or before [INSERT DATE THAT IS 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit written comments, identified by RIN 3133-AF11, by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: (703) 518-6319. Include “[Your Name]—Comments on Proposed Rule: Joint Ownership Share Accounts” in the transmittal.
- Mail: Address to Gerard S. Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

PUBLIC INSPECTION: You may view all public comments on the Federal eRulemaking Portal at <http://www.regulations.gov> as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA’s law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518-6540 or e-mailing OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Thomas I. Zells, Staff Attorney, Office of General Counsel, at 1775 Duke Street, Alexandria, VA 22314 or telephone: (703) 548-2478.

SUPPLEMENTARY INFORMATION:

- I. Background**
- II. Legal Authority**
- III. Summary of the Proposed Rule**
- IV. Regulatory Procedures**

I. Background

The Board proposes to amend its share insurance regulation governing the requirements for a share account to be insured separately as a joint account.¹ Specifically, this proposal addresses the requirement for separate joint account insurance that each co-owner of a joint account has personally signed a membership card or account signature card. In the event a federally insured credit union (FICU) could not produce from its records such membership cards or account signature cards, this proposal would explicitly permit the use of other evidence contained in a FICU's account records to satisfy the signature card requirement. The proposal discusses examples of such evidence more fully in the sections that follow.

¹ 12 CFR 745.8.

This amendment would mirror a change made by the Federal Deposit Insurance Corporation (FDIC) in 2019 for federally insured depository institutions.² This proposed rule is intended to facilitate the prompt payment of share insurance in the event of a FICU's failure by explicitly providing alternative methods that the NCUA could use to determine the owners of joint accounts, consistent with the NCUA's statutory authority. The Board emphasizes that this change is not in reaction to any observed current problem with respect to identifying qualifying joint accounts at credit unions and processing insurance payments timely. Rather, the Board is issuing this proposed rule because it is important to maintain parity between the nation's two federal deposit/share insurance programs and to provide credit union members with equal access to insurance coverage. These regulatory changes would promote further confidence in the credit union system and embody a forward-looking approach that would explicitly permit the use of new and innovative technologies and processes to meet the NCUA's policy objectives.

Under the Federal Credit Union Act (FCU Act), the NCUA is responsible for paying share insurance to any member, or to any person with funds lawfully held in a member account, in the event of a FICU's failure up to the standard maximum share insurance amount (SMSIA), which is currently set at \$250,000.³ The FCU Act states that the determination of the net amount of share insurance paid "shall be in accordance with such regulations as the Board may prescribe" and requires that, "in determining the amount payable to any member, there shall be added

² 84 FR 35022 (July 22, 2019).

³ 12 U.S.C. 1787(k)(1)(A), (6).

together all accounts in the credit union maintained by that member for that member's own benefit, either in the member's own name or in the names of others."⁴ However, the FCU Act also specifically authorizes the Board to "define, with such classifications and exceptions as it may prescribe, the extent of the share insurance coverage provided for member accounts, including member accounts in the name of a minor, in trust, or in joint tenancy."⁵

The NCUA has implemented these requirements by issuing regulations recognizing particular categories of accounts, such as single ownership accounts and joint ownership accounts.⁶ If an account meets the requirements for a particular category, the account is insured up to the \$250,000 limit separately from shares held by the member in a different account category at the same FICU. For example, provided all requirements are met, shares in the single ownership category will be separately insured from shares in the joint ownership category held by the same member at the same FICU.

Section 745.8 of the NCUA's regulations governs insurance coverage for joint ownership accounts.⁷ Joint ownership accounts include share accounts held pursuant to various forms of co-ownership under state law. For example, joint tenants could each hold an equal, undivided interest in a share account. Section 745.8 provides that only "qualifying joint accounts" are insured separately from individually owned share accounts maintained by the co-owners.⁸

⁴ 12 U.S.C. 1787(k)(1)(B).

⁵ 12 U.S.C. 1787(k)(1)(C).

⁶ 12 CFR part 745.

⁷ 12 CFR 745.8.

⁸ *Id.*

“Qualifying joint accounts” generally must satisfy two requirements: (1) each co-owner has personally signed a membership card or account signature card; and (2) each co-owner possesses withdrawal rights on the same basis.⁹ If a joint account is not a qualifying joint account, each co-owner’s actual ownership interest in the account is considered individually owned and added to any other accounts individually owned by the co-owner and insured up to the SMSIA in the aggregate.¹⁰ This may result in some uninsured shares if a member’s single ownership accounts at the same FICU, including shares in any non-qualifying joint accounts, exceed \$250,000. Additionally, it is worth reiterating that, with limited exceptions, the FCU Act generally limits NCUA share insurance coverage to “member accounts.”¹¹ Despite this general limitation, the FCU Act¹² and the NCUA’s regulations¹³ do allow a nonmember to become a joint owner with a member on a joint account with right of survivorship. The regulations provide that a nonmember's interest in such accounts will be insured in the same manner as the member joint-owner's interest.

The signature requirement has been included in the regulation governing insurance coverage since its inception in 1971.¹⁴ The FDIC has had a substantially similar signature requirement since 1967.¹⁵ In originally adopting this requirement, the FDIC “intended to address practices such as the addition of nominal co-owners to an account solely to increase deposit insurance

⁹ 12 CFR 745.8(c).

¹⁰ 12 CFR 745.8(d).

¹¹ 12 U.S.C. 1752(5).

¹² 12 U.S.C. 1759(a).

¹³ 12 CFR 745.8(e).

¹⁴ 36 FR 2477 (Feb. 5, 1971).

¹⁵ *See* 32 FR 10408, 10409 (July 14, 1967).

coverage.”¹⁶ The NCUA thereafter adopted a substantially similar requirement¹⁷ and views it as a reliable indicator of account ownership and important to ensuring consistency with the FCU Act, which expressly limits the net amount of share insurance payable to any member, or person with funds lawfully held in a member account, based on the member account classifications prescribed by the Board.¹⁸

Neither the FCU Act nor the NCUA’s regulations define the terms “membership card” or “account signature card.” In implementing § 745.8, the NCUA has not required any particular format for a membership card or account signature card. Therefore, the agency has previously permitted FICUs to satisfy the requirement through various forms of documentation used in their account opening processes. The Board also wishes to reiterate that, consistent with the Electronic Signatures in Global and National Commerce Act (E-Sign Act),¹⁹ the signature requirement may be satisfied electronically. This has been the NCUA’s long-standing position.

II. Legal Authority

The Board has issued this proposed rule pursuant to its authority under the FCU Act. Under the FCU Act, the NCUA is the chartering and supervisory authority for FCUs and the Federal

¹⁶ 84 FR 35022, 35023 (July 22, 2019).

¹⁷ The FCU Act generally requires that the NCUA determine “the net amount of share insurance payable ... in accordance with this paragraph, and *consistently with actions taken by the Federal Deposit Insurance Corporation* under section 1821(a) of this title.” 12 U.S.C. 1787(k)(1)(A) (emphasis added).

¹⁸ 12 U.S.C. 1787(k)(1).

¹⁹ Pub. L. 106–229, codified at 15 U.S.C. 7001(a).

supervisory authority for FICUs.²⁰ The FCU Act grants the NCUA a broad mandate to issue regulations governing both FCUs and FICUs. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the FCU Act.²¹ Section 207 of the FCU Act is a specific grant of authority over share insurance coverage, conservatorships, and liquidations.²² Section 209 of the FCU Act is a plenary grant of regulatory authority to the NCUA to issue rules and regulations necessary or appropriate to carry out its role as share insurer for all FICUs.²³ Accordingly, the FCU Act grants the Board broad rulemaking authority to ensure that the credit union industry and the NCUSIF remain safe and sound.

III. Summary of the Proposed Rule

The Board is proposing to amend § 745.8 to explicitly provide for an alternative method to satisfy the signature card requirement. The proposed rule would specifically allow the signature card requirement to be satisfied by information contained in the account records of the FICU establishing the co-ownership of the share account, such as evidence that the FICU has issued a mechanism for accessing the account to each co-owner or evidence of usage of the share account by each co-owner. For example, under this proposal, the requirement could be satisfied by evidence that a FICU has issued a debit card to each co-owner of the account or evidence that each co-owner of the account has conducted transactions using the share account. These

²⁰ 12 U.S.C. 1752–1775.

²¹ 12 U.S.C. 1766(a).

²² 12 U.S.C. 1787(b)(1).

²³ 12 U.S.C. 1789(a)(11).

examples, however, are not intended to define the only forms of evidence of co-ownership that could satisfy the signature requirement. To the contrary, the evidence found in a FICU's account records could take many other forms.

The proposed rule only would affect a requirement in the NCUA's regulations that must be satisfied for a share account to be separately insured as a joint account; it would not affect any other legal requirements applicable to FICUs. FICUs may, for legal or other reasons, find it appropriate or necessary to continue collecting customers' signatures.²⁴ The changes made by the proposed rule would not modify or affect any state law requirements generally applicable to FICUs.

The proposal also would not affect the general principles contained in § 745.2 of the NCUA's share insurance regulations applicable in determining insurance of accounts.²⁵ These general principles applicable in determining insurance of accounts would continue to apply to all share accounts, including joint ownership accounts.

The proposed rule would not introduce any new requirements for an account to be insured as a joint account, and would not reduce or affect insurance coverage for any account for which the existing joint account requirements are satisfied. The proposed rule simply would provide an alternative method to satisfy the existing signature card requirement. If each co-owner of a joint

²⁴ See, e.g., 12 CFR part 701, appendix A and corresponding state law requirements for federally insured, state-chartered credit unions.

²⁵ 12 CFR 745.2.

account signs, or has previously signed, a membership card or account signature card in accordance with the existing requirement and the FICU can produce it, then the proposed alternative method would be unnecessary. Assuming that the remaining qualifying joint account requirement is satisfied—that is, both co-owners possess equal withdrawal rights—and all other membership requirements are met,²⁶ the account would be insured as a joint account. The proposal would apply to all FICUs and would not impose any increased burden or new recordkeeping requirements for joint accounts.

The rule also provides non-quantifiable benefits to owners of joint accounts. By explicitly providing alternative methods that the NCUA could use to determine the owners of joint accounts, the proposed rule would further support a prompt share insurance determination in the event of a FICU's failure, alleviating delays in the recognition of account ownership and uncertainty regarding the extent of share insurance coverage. These benefits would promote confidence in the credit union system and NCUA-insured shares.

The NCUA invites comments on all aspects of the proposal.

IV. Regulatory Procedures

²⁶ With limited exceptions, the FCU Act generally limits NCUA share insurance coverage to “member accounts.” 12 U.S.C. 1752(5). Despite this general limitation, the FCU Act and the NCUA’s regulations do allow a nonmember to become a joint owner with a member on a joint account with right of survivorship. 12 U.S.C. 1759(a). The regulations provide that a nonmember’s interest in such accounts will be insured in the same manner as the member joint owner’s interest. 12 CFR 745.8(e).

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include FICUs with assets less than \$100 million) and publishes its certification and a short, explanatory statement in the Federal Register together with the rule. The proposed rule explicitly allows the NCUA to look to information contained in the account records of a FICU in order to satisfy the signature card requirement at the time of a FICU's failure. As a result, it will not cause any increased burden on FICUs and will not have an impact on small credit unions. Accordingly, the NCUA certifies that the proposed rule will not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates a new or amends existing information collection requirements.²⁷ For the purpose of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-

²⁷ 44 U.S.C. 3507(d); 5 CFR part 1320.

party disclosure requirement. The proposed rule does not contain information collection requirements that require approval by OMB under the PRA.²⁸ The proposed rule will merely allow the NCUA to look to information contained in the account records of a FICU in order to satisfy the signature card requirement at the time of a FICU's failure.

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, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rulemaking will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.²⁹

²⁸ 44 U.S.C. Chap. 35.

²⁹ Pub. L. 105-277, 112 Stat. 2681 (1998).

List of Subjects

12 CFR Part 745

Credit, Credit unions, Share insurance.

By the National Credit Union Administration Board on May 21, 2020.

Gerard Poliquin

Secretary of the Board

For the reasons discussed above, the NCUA Board proposes to amend 12 CFR part 745 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 745 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; title V, Pub. L. 109-351; 120 Stat. 1966.

2. Revise § 745.8(c) to read as follows:

§ 745.8 Joint ownership accounts

* * * * *

(c) *Qualifying joint accounts.* (1) A joint account is a qualifying joint account if each of the co-owners has personally signed a membership or account signature card and has a right of withdrawal on the same basis as the other co-owners. The signature requirement does not apply to share certificates, or to any accounts maintained by an agent, nominee, guardian, custodian or conservator on behalf of two or more persons if the records of the credit union properly reflect that the account is so maintained.

(2) *Alternative method to satisfy membership or account signature card requirement.* The signature card requirement of paragraph (c)(1) of this section also may be satisfied by information contained in the account records of the federally insured credit union establishing co-ownership of the share account, such as evidence that the institution has issued a mechanism for accessing the account to each co-owner or evidence of usage of the share account by each co-owner.

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