

**Attachment 3**

**THE OFFICE OF GENERAL COUNSEL'S  
REPORT ON REGULATIONS REVIEWED IN  
2015**

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## **700. Definitions**

Part 700 contains the general definitions for NCUA's regulations. This part was last updated in 2013 when amendments were made to the definition of “troubled condition.” Some terms defined in Part 700 are also defined in other parts of NCUA’s regulations, but not always in exactly the same way. We recommend amending this part to reconcile any inconsistencies among the definitions.

### **701.1 Federal Credit Union Chartering, Field of Membership Modifications, and Conversions and Appendix B to Part 701 – Chartering and Field of Membership Manual**

This regulation sets forth the Chartering and Field of Membership Manual applicable to Federal Credit Unions (FCU).

In November 2015, the Board issued a comprehensive proposal to amend various aspects of the Chartering and Field of Membership Manual. The proposed amendments addressed: the definitions of a local community, rural district, and underserved area; the expansion of multiple common bond credit unions based on a trade, industry, or profession; and the process for applying to charter or expand an FCU. Public comments are due by February 8, 2016, which we will review and consider before making further recommendations on how to revise this appendix.

### **701.2 Federal Credit Union Bylaws and Appendix A to Part 701 – Federal Credit Union Bylaws**

Section 701.2 requires FCUs to operate in accordance with their approved bylaws. In October 2007, NCUA adopted the current standard bylaws for FCUs and incorporated them as Appendix A to Part 701. FCUs may amend their bylaws with agency approval.

We have received public comments on the bylaws suggesting that NCUA update the bylaws to provide FCUs with greater flexibility. In addition, four commenters asked NCUA to review the requirement that all FCUs utilize the same standard bylaws, regardless of the FCU’s size and complexity. Three commenters suggested NCUA work with representatives from the industry to review the bylaws.

NCUA carefully considers bylaw questions, concerns, and amendment requests. NCUA will continue to monitor possible issues regarding the bylaws.

### **701.3 Member Inspection of Credit Union Books, Records, and Minutes**

This regulation sets forth the conditions under which a group of FCU members may petition an FCU for inspection of its books, records, and minutes. We are unaware of any problems that suggest we should revise it at this time.

#### **701.4** General Authorities and Duties of Federal Credit Union Directors

NCUA adopted this regulation in 2010 to document and clarify the fiduciary duties and responsibilities of FCU directors. The regulation requires each FCU director to carry out his or her duties in a manner the director believes to be in the best interests of the membership of the credit union as a whole. The regulation also requires directors to be familiar with basic accounting principles, including the ability to read and understand the FCU's balance sheet and income statement. We are unaware of any issues that suggest we should revise this section.

#### **701.6** Fees Paid by Federal Credit Unions

This regulation provides the basic rules and procedures for FCUs to pay their annual operating fees to NCUA. We received no comments on this section and are unaware of any problems that indicate further revision is necessary at this time.

#### **701.14** Change in Official or Senior Executive Officer in Credit Unions that Are Newly Chartered or are in Troubled Condition

This regulation implements the statutory requirement that a newly chartered credit union or credit union in troubled condition must notify NCUA of any changes in its board of directors, committee members, or senior executive staff, and give NCUA the opportunity to disapprove an individual for such a position. NCUA issued a final rule in 2013 amending the definition of "troubled condition" to allow either a state supervisory authority or NCUA to use its own CAMEL or CRIS rating of a federally insured, state-chartered credit union (FISCU) for the limited purpose of designating it in "troubled condition." We are unaware of any problems that suggest it should be revised at this time.

#### **701.19** Benefits for Employees of Federal Credit Unions

This regulation sets forth requirements for FCUs that wish to provide employee benefits to their employees. We last updated this regulation in 2003. We are unaware of any problems that suggest we should revise the regulation at this time. However, we are aware of safety and soundness concerns in this context including FCUs investing in life insurance products. The Office of Examination and Insurance plans to address these concerns in a guidance document.

#### **701.20** Suretyship and Guaranty

This regulation authorizes an FCU to enter into a surety or guaranty agreement as an incidental power that binds it to pay the obligations of another party, if specified regulatory requirements are met. We last revised this regulation in 2004. We received no comments on this section and are unaware of any issues that suggest we should revise §701.20 at this time.

## **701.21 Loans to Members and Lines of Credit to Members**

This regulation sets forth FCU lending rules, addresses preemption of state laws, limits third party servicing of indirect vehicle loans, and addresses put option purchases in managing interest rate risk for real estate loans sold on the secondary market. We received a number of public comments asking for the elimination, clarification or simplification of several provisions of §701.21.

Several commenters addressed the loan maturity limit in 701.21(c)(4) and argued that NCUA should treat certain loans for real property, which are currently deemed member business loans, as long-term mortgage loans instead. In light of NCUA's recently proposed revisions to its member business loans rule and the statutory limitations on the types of loans that are excluded from the definition of "member business loans," we do not believe it is appropriate to add additional exclusions from that definition.

One commenter requested that NCUA delete the requirement that a borrower be a member of an FCU for at least one month before an FCU may make a payday alternative loan under §701.21(c)(7)(iii) to that borrower. We believe this requirement is an important safety and soundness measure in this context. Accordingly, we do not recommend removing this requirement. Another commenter urged NCUA to monitor the upcoming regulations from the CFPB to ensure that the CFPB regulations would not conflict with the payday alternative loan provisions.

Four commenters also requested NCUA clarify how it interprets the term "overall financial performance" in §701.21(c)(8)(iii). Generally, §701.21(c)(8) prohibits most credit union employees and officials from receiving compensation made "in connection with any loan" a credit union makes. An exception, however, permits incentive compensation to employees based on the credit union's overall financial performance. Commenters expressed uncertainty around whether NCUA permits loan metrics such as aggregate loan growth to be a factor in assessing overall financial performance and asserted that the regulation is subject to varying interpretations and levels of enforcement across regions. Given the degree of confusion and problems this provision has caused, we recommend amending it to clarify and modernize it.

Finally, another commenter recommended that NCUA relax its current policy, set forth in Letter to Credit Unions 08-CU-25, requiring credit unions to actively market a foreclosed property when it is rented. Changing this policy would not require amending §701.21.

## **701.22 Loan Participations**

This regulation sets forth the requirements for federally insured credit unions (FICUs) that wish to enter into a loan participation agreement. In 2013, the Board issued a final rule amending §701.22. The final rule reorganized the loan participation rule to focus its regulatory provisions on the purchase side of loan participation transactions. The amendments clarified NCUA's regulatory requirements for loan participations covered under the rule and expanded loan participation requirements to FISCUs. Public

comments on this regulation indicate that the provision relating to the definition of “originating lender” has sometimes created problems for credit unions involved in participations of indirect auto loans because a narrow reading of the current definition would inhibit these types of transactions. In August 2015, OGC issued a public legal opinion to clarify that, where a loan participation involves an indirect lending arrangement and certain limiting conditions exist, a broader reading of the definition is warranted. Thus, so long as the conditions described in the opinion exist, a participating credit union is permitted to purchase a participation in a loan generated through an indirect lending arrangement. We are unaware of any other problems that indicate further revision of this section is necessary at this time.

#### **701.23** Purchase, Sale, and Pledge of Eligible Obligations

This regulation sets forth the requirements for the purchase, sale, and pledge of eligible obligations by FCUs. The Board issued a final rule in 2013 to clarify the scope of the regulation and to distinguish it from transactions covered by §701.22. We are unaware of any problems that would suggest this section should be further revised at this time.

#### **701.24** Refund of Interest

This regulation authorizes an FCU’s board of directors to refund interest payments made by a member to the FCU. It also provides parameters for the amount of the refund payment. We received no comments on this section and are unaware of any problems that would suggest §701.24 should be revised at this time.

#### **701.26** Credit Union Service Contracts

This regulation addresses the requirements for FCUs that wish to contract with each other or other organizations regarding use or ownership of fixed assets or operational services. We received no comments on this section. We are unaware of any problems with this regulation and recommend no revisions at this time.

#### **701.30** Services for Nonmembers Within the Field of Membership

This regulation implements section 503 of the Financial Services Regulatory Relief Act of 2006. It permits FCUs to provide certain, limited financial services to nonmembers within their fields of membership. The regulation was amended in 2011 to reflect changes to the FCU Act enacted in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). These changes permit FCUs to offer remittance transfers and removed redundant language in the rule regarding electronic fund transfers.

We received two public comments noting that, by preempting state UCC laws, §701.30(b) protects FCUs that charge fees for cashing on-us checks to nonmembers in their fields of membership from potential liability for wrongful dishonor. The commenters requested that NCUA amend §701.30 to preempt liability for cashing on-us checks to nonmembers not in the FCU’s field of membership. The Financial Services

Regulatory Relief Act of 2006 specifically amended the FCU Act to allow credit unions “to cash checks and money orders for persons in the field of membership for a fee [.]” 12 U.S.C. §1757(12)(B). It did not provide FCUs any additional powers related to persons outside their fields of membership. NCUA does not have the statutory authority to amend §701.30 to provide FCUs this power. We are unaware of any other problems that suggest further revisions are necessary at this time.

#### **701.31**            Nondiscrimination Requirements

This regulation implements the Fair Housing Act requirement to issue affirmative notice of nondiscrimination compliance in all advertising related to residential real estate lending. It prohibits an FCU from engaging in discrimination relative to real-estate related loans, appraisals, and advertising. The Board last substantively amended the regulation in 2001. In 2012, the Board made a technical amendment to the regulation that updated citations to the Consumer Financial Protection Bureau’s (CFPB) Regulation B. In December 2014, the Board made two more amendments to §701.31. The first amendment eliminated §701.31(c)(5)’s requirement, made duplicative by the CFPB’s amendment to §1002.14 of Regulation B, that FCUs make available, to any requesting member, a copy of the appraisal used in connection with that member’s application for a loan secured by a first lien on a dwelling. The second, a minor technical amendment, corrected and updated the definition of the term “application” in §701.31(a)(1), which is defined in 12 C.F.R. 1002.2(f) (Regulation B), to reflect revisions made to §1002.2(f). We have not received any substantive public comment on this regulation, and it remains consistent with statutory requirements. We are unaware of any problems that would suggest §701.31 should be revised at this time.

#### **701.32**            Payment on Shares by Public Units and Nonmembers

This regulation provides that, subject to certain limitations, FCUs may accept shares from public units, their political subdivisions, and nonmembers. We are not aware of any problems that suggest we should revise it at this time.

#### **701.33**            Reimbursement, Insurance, and Indemnification of Officials and Employees

This regulation permits an FCU to compensate only one board member for board service and states that no other official may be compensated for serving as a board or committee member. This regulation was last amended in 2010. We have not received any public comments on this section or have been made aware of any problems. We do not recommend revising it at this time.

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

This regulation provides that an FCU must receive a low-income designation from NCUA: (1) to accept nonmember deposits and secondary capital accounts; (2) to be



exempted from the statutory limit on member business loans; and (3) to participate in the Community Development Revolving Loan Fund program. This regulation was last amended in 2013. Several commenters requested that NCUA change the process for designating a credit union as “low-income” to make it easier for credit unions to qualify and to provide greater transparency in the designation process. Further, the commenters suggested that NCUA make low-income designations permanent or, at a minimum, increase the amount of time a credit union has to unwind transactions after it loses its low-income designation. Based on these comments and other information we have received, we believe it would be helpful to revise this regulation to make the process clearer and more manageable for credit unions, but we do not recommend making the designation permanent or extending the time a credit union must take action after losing the designation.

### **701.35** Share, Share Draft, and Share Certificate Accounts

This regulation implements statutory authority under the FCU Act enabling FCUs to receive payments, representing equity, on various types of share accounts. The regulation: (1) authorizes FCUs to offer share, share draft, and share certificate accounts; (2) requires accurate representation of account terms and conditions; and (3) preempts state law attempting to regulate fees, charges, and other matters affecting the opening, maintaining, and closing of such accounts. We are not aware of any problems with this rule that suggest it should be revised at this time.

### **701.36** FCU Occupancy, Planning, and Disposal of Acquired and Abandoned Premises

This regulation governs FCU ownership of fixed assets by establishing occupancy, planning, and disposal requirements for FCU premises. It also prohibits certain transactions. The regulation was recently amended in August 2015 to eliminate a provision that established a five percent aggregate limit on investments in fixed assets for FCUs with \$1,000,000 or more in assets. As a result of the 2015 amendments, provisions regarding waivers from the aggregate limit are no longer relevant, so the 2015 final rule also eliminated them. Instead of applying the former prescriptive limit, NCUA is overseeing FCU ownership of fixed assets through the supervisory process and guidance.

The 2015 final rule also made conforming amendments to the scope and definitions sections of the regulation to reflect this modified approach, and it revised the title of §701.36 (formerly, “FCU Ownership of Fixed Assets”) to more accurately reflect its amended scope and applicability. In addition, the final rule simplified the regulation’s partial occupancy requirements for FCU premises acquired for future expansion by establishing a single six-year time period for partial occupancy of all premises and by removing the 30-month requirement for partial occupancy waiver requests.

We continue to receive public comments on the rule’s full occupancy requirement. We are mindful of commenters’ continuing requests for relief in this area and recommend the Board consider a rule change in this regard.

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

This regulation authorizes FCUs to accept certain types of accounts on behalf of the U.S. Treasury Department. The regulation describes the types of accounts that may be accepted and outlines certain criteria that apply when an FCU elects to serve as a Treasury tax and loan depository. We last revised this section in 2013. We received no comments on this section and are not aware of any problems that suggest §701.37 should be revised at this time.

**701.38** Borrowed Funds from Natural Persons

This regulation, last amended in 2007, addresses the ability of FCUs to borrow funds from natural persons using a promissory note. We are not aware of any substantive problems with this regulation and recommend no revisions at this time.

**701.39** Statutory Lien

This regulation implements statutory authority under the FCU Act enabling an FCU to impress a lien on the shares and dividends of a member and enforce that lien to satisfy the member's outstanding financial obligations due and payable to the credit union, even when such obligations are not secured by shares. We are unaware of any problems with this regulation that suggest we should revise it at this time.

**702** Capital Adequacy

Part 702 implements minimum capital standards for FICUs and mandatory and discretionary supervisory actions to restore net worth, all as mandated by the Credit Union Membership Access Act. In October 2015, the Board approved a final rule that makes substantial revisions to Part 702. As a result of these recent revisions, we do not believe Part 702 should be revised further at this time.

**703** **Investment and Deposit Activities**

Part 703 sets forth the requirements for FCU investment and deposit activities. The last significant revision to this part was in 2014 with the adoption of the final derivatives rule.

We have received public comment on the investment rule indicating that FCUs would like to be permitted to purchase mortgage servicing rights and have greater overall flexibility in making investments. The Office of Examination and Insurance (E&I) is currently preparing recommendations to amend Part 703 to modernize and improve it. We suggest the Board review E&I's recommendations when they are available and consider updating Part 703.

**704** Corporate Credit Unions

Part 704 sets forth the rules governing corporate credit unions. Significant revisions to Part 704 were made or became effective in 2010, 2011, 2013, 2014, and 2015.

Although several commenters have requested additional changes to Part 704, we believe the numerous and major revisions referenced above are sufficient, and we do not recommend the Board make additional revisions at this time.

**705** **Community Development Revolving Loan Fund Access for Credit Unions**

Part 705 implements the Community Development Revolving Loan Program for credit unions. This regulation was comprehensively revised in October 2011. The Office of Small Credit Union Initiatives (OSCU) has recommended several clarifying and technical revisions to Part 705 in order to more accurately reflect the procedures by which technical assistance grants and community development loans are made. We suggest the Board review OSCU's recommendations and consider updating Part 705.

**707** Truth in Savings

This regulation provides for disclosure to members of certain terms and conditions on share accounts. Under the Dodd-Frank Act, NCUA retains authority to write truth in savings regulations substantially similar to those that the CFPB prescribes for other depository institutions. NCUA last made revisions to Part 707, along with other technical amendments, in 2013. Staff will continue to monitor any CFPB rulemakings in this regard, but we do not recommend the Board make any revisions at this time.

**708a** Bank Conversions and Mergers

This regulation governs applications for conversions to banks. NCUA adopted substantive changes to this rule in 2010, which included a new subpart on conversions by merger, as well as changes to the voting requirements designed to improve the confidentiality and integrity of the member voting process. We received one public comment requesting that NCUA exempt FISCUs from the requirements of Part 708a and instead defer to state regulation in this area. The FCU Act gives NCUA the authority and responsibility to administer the methods and procedures of the member vote for all FICUs. We are unaware of any issues that suggest we should revise this regulation at this time.

**708b** Mergers of Federally Insured Credit Unions; Voluntary Termination or Conversion of Insured Status

This regulation sets forth the procedures for credit union to credit union mergers as well as the procedures for the termination of federal insurance or conversion of federal insurance to nonfederal insurance. This regulation was last revised in 2010. Those

revisions included a requirement to disclose any material increase in compensation to senior officials that would result from a merger and a requirement to consider whether a share adjustment is necessary in certain situations. We are unaware of any issues that suggest we should revise this regulation at this time.

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

This regulation sets forth the requirements that must be followed to involuntarily liquidate an FCU. Revisions to Part 750 involving golden parachute and indemnification payments rendered some of the payout priorities in §709.5(b)(2) inconsistent with the provisions of §750.7. Section 750.7 specifically addresses the applicability of the other provisions of Part 750 in the event of liquidation or conservatorship. Because §750.7 specifically prohibits the liquidating agent from paying severance pay either as a creditor claim or as a claim stemming from repudiation, retaining the reference to severance pay in §709.5(b)(2) is inappropriate. In addition, §709.8(c)(1)(iv)(B) provides that judicial review of a final determination on appeal by the NCUA Board shall be to the U.S. Court of Appeals. Because the FCU Act does not specifically state that venue is properly there, the venue should be changed in the regulation to the U.S. District Court to reflect the normal default venue for review of final agency decisions.

**710                    Voluntary Liquidation**

This regulation sets forth the requirements for voluntary liquidation of FCUs. In 2014, NCUA adopted a final rule to update this regulation. As a result of these recent revisions, we recommend no further amendments at this time.