

THE OFFICE OF GENERAL COUNSEL'S
REPORT ON REGULATIONS REVIEWED IN
2012

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*Regulations designated by an asterisk in the above table of contents and in the following rule synopses are among those revised as a result of the elimination of NCUA's former Regulatory Flexibility Program (RegFlex) in 2012. The rule synopses focus on issues other than the RegFlex revisions.

700. Definitions

Part 700 is the general definitions section for NCUA's regulations. This section was last updated in 2011 to conform the definition of "net worth" to statutory changes. In July 2012, the Board issued a proposed rule to add a definition of the term "troubled condition" to this section. 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 revising Part 700 and, if necessary, other parts of NCUA's regulations to reconcile any definitional inconsistencies.

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

NCUA adopted substantial changes to the chartering and field of membership manual in 2010. These amendments included using objective and quantifiable criteria to determine the existence of a local community and defining the term "rural district." Based on feedback on the revised definition of rural district, NCUA proposed an amended definition in September 2012 and expects to adopt a similar definition in February 2013. Staff does not recommend making other changes to the chartering manual at this time. However, we plan to continue to review the associational common bond provisions to determine if automatically qualifying some groups, such as alumni associations, is prudent.

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

NCUA adopted the current bylaws and incorporated them as Appendix A to Part 701 in October 2007. We have received public comment on the bylaws indicating that they should be updated and streamlined to afford greater flexibility to federal credit unions. One commenter suggested that we should clarify, in particular, the bylaw on account establishment for living trusts. We believe most credit unions have no serious problems with the bylaws. However, we plan to establish a working group consisting of NCUA and credit union industry participants to review the bylaws to determine if any are in need of modernizing.

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. NCUA adopted this regulation in 2007. 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. The Board amended this regulation in June 2009 to permit FCUs to subtract investments made under the Credit Union System Investment Program (CU SIP) and the Credit Union Homeowners Affordability Relief Program (CU HARP) from their total assets to eliminate a disincentive for some FCUs to participate in those programs. We 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 or troubled credit union 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 proposed rule in July 2012 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 FISCO for the limited purpose of designating it as in "troubled condition." We anticipate presenting a final rule to adopt the proposed definition in early 2013.

701.19 Benefits for Employees of Federal Credit Unions

This regulation sets forth requirements for FCUs that wish to provide retirement benefits to their employees. We last updated this regulation in 2003. We are unaware of any concerns that suggest we should revise it at this time. However, we are aware of safety and soundness concerns related to credit unions investing in bank-owned life insurance products. The Office of Examination and Insurance plans to address these concerns with a guidance letter.

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 are unaware of any issues that would suggest we should revise it 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 lending 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.

Section 701.21 was amended in 2010 and 2011. In 2010, paragraph (c)(7)(iii) was added to enable FCUs to offer payday-alternative loans (PAL or PAL loans), then referred to as short-term, small amount loans, as an alternative to predatory payday loans.

In 2011, paragraph (h)(4)(iv) was revised to make the definition of “net worth” consistent with that in §702.2(f)(3). Also in 2011, the Board made a number of minor technical changes to the section as a result of the 2009 regulatory review process.

We have received public comments on this aspect of the regulation suggesting that the \$20 PAL loan application fee limit be raised. In September 2012, the Board issued an advance notice of proposed rulemaking seeking comment on whether and how the PAL rule should be amended to encourage more FCUs to offer PAL loans. After reviewing these comments, the Board has decided not to further amend the PAL rule at this time.

Outside of the PAL loans context, one commenter noted that §701.21 defines “official” two different ways. Paragraph (c)(8)(ii) states that the term “means any member of the board of directors or a volunteer committee.” In contrast, paragraph (d)(2) states, “[a]n ‘official’ is any member of the board of directors, credit committee or supervisory committee.” We are unaware of any confusion caused by this but recommend the definitions be reconciled the next time we make technical amendments to the regulation. We are unaware of any other problems that suggest the regulation should be further revised at this time.

701.22 Loan Participation

Section 701.22 sets forth the requirements for FCUs that wish to enter into a loan participation agreement. In December 2011, the Board issued a proposed regulation for this section. The proposed rule reorganizes the current rule and focuses its regulatory provisions on the purchase side of a loan participation. It aims to improve understanding of the transactions covered under the rule and expands loan participation requirements to federally insured, state-chartered credit unions. We are currently working on a final regulation.

701.23* Purchase, Sale, and Pledge of Eligible Obligations

Section 701.23 sets forth the requirements for the purchase, sale, and pledge of eligible obligations by FCUs. The Board issued a proposed regulation in December 2011 to clarify the scope of the rule and to distinguish it from transactions covered by §701.22. We are currently working on a final regulation.

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 are unaware of any problems that would suggest we should revise §701.24 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. NCUA last amended the rule in 1998. We are unaware of any problems with this regulation and recommend no revisions.

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 have not received any public comment on this regulation and are unaware of any problems that suggest further revisions are necessary.

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 last substantive amendment to the regulation was made in 2001. In March 2012, a technical amendment to the rule made the Office of Consumer Protection responsible for accepting discrimination complaints under the Fair Housing Act and the Equal Credit Opportunity Act. We have not received any substantive public comment on this regulation, and it remains consistent with statutory requirements.

Nevertheless, we believe certain technical amendments may be helpful. One commenter noted the reference to Regulation B contained in subsection (a) should be updated to reflect its new citation (12 C.F.R. § 1002.2(f)). Certain language in the rule also needs to be updated to reflect an earlier change to Regulation B. Finally, a minor amendment to capitalize the word “federal” in subsection (d) would improve internal consistency.

We are monitoring an anticipated rulemaking by the Consumer Financial Protection Bureau (CFPB) for potential impact on §701.31. Future amendments to Regulation B could require us to revise §701.31, including the standard notice of nondiscrimination compliance. At this time, however, no change is necessary in this regard.

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. This regulation was last amended in 2001. 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 2007. We have received public comment suggesting that we codify our legal opinions on this topic in an official staff commentary section. We are not aware of any significant confusion with this regulation. Accordingly, we do not recommend revising it.

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. In October 2012, the Board issued a proposed regulation to extend the time a credit union has to accept a low-income designation upon receiving notification of its eligibility from NCUA. We are currently working on a final rule, which we anticipate presenting at the January 2013 Board meeting.

701.35 Share, Share Draft, and Share Certificate Accounts

This rule implements statutory authority under the FCU Act enabling FCUs to receive payments, representing equity, on various types of share accounts. The rule: (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 Ownership of Fixed Assets

This rule establishes limitations on FCU ownership of fixed assets. It was last amended in 2009. We continue to receive questions about the fixed assets rule, indicating there is some confusion about its application. Accordingly, we are currently working on a proposed rule to clarify the regulation by improving its organization, structure, and ease of use. We plan to present a proposed rule in early 2013.

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

This rule authorizes FCUs to accept certain types of accounts on behalf of the U.S. Treasury Department. The rule 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 are not aware of any problems that suggest we should revise the substance of the rule at this time. However, the rule contained an outdated reference to the amount of federal share insurance that is available for these types of accounts. Accordingly, in January 2013, the Board replaced the outdated reference to “\$100,000,” which appeared twice in §701.37(c), with a reference to the current standard maximum share insurance amount of \$250,000.

701.38 Borrowed Funds from Natural Persons

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

701.39 Statutory Lien

Under the FCU Act, an FCU may 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 Prompt Corrective Action

The prompt corrective action (PCA) rule implements minimum capital standards for federally insured credit unions and mandatory and discretionary supervisory actions to restore net worth, all as mandated by the Credit Union Membership Access Act. In 2013, we anticipate presenting the Board with a proposed rule to update the risk-based net worth component of PCA.

703 Investment and Deposit Activities

Part 703 sets forth the requirements for FCU investment and deposit activities. In 2011, as required by the Dodd-Frank Act, the Board issued a proposed rule to remove credit ratings from NCUA's regulations. The proposal modified several provisions in Part 703. The Board issued a final credit ratings rule in December 2012. Also in 2011, the Board issued an ANPR requesting comment on whether and how to modify Part 703 to permit FCUs to engage in the purchase and sale of financial derivatives for the purpose of offsetting interest rate risk. In 2012, the Board issued a second ANPR requesting additional comments to identify the conditions for FCUs to engage in derivatives transactions. We plan to present a proposed rule on derivatives in 2013. Also in 2012, the Board issued a proposed rule to allow FCUs to purchase Treasury Inflation Protected Securities (TIPS). We plan to present a final TIPS rule to the Board in early 2013. Finally, in 2012, the Board amended Part 703 to permit all FCUs to purchase commercial mortgage related securities, subject to certain conditions.

We have received public comment on the investment rule indicating that FCUs should be able to purchase mortgage servicing rights from other credit unions. Another commenter suggested the rule should be revised to no longer require an FCU to obtain a second price quotation before purchasing or selling a seasoned security. One commenter requested that Part 703 be revised to give FCUs more investment flexibility. We understand E&I will review Part 703 and recommend revisions in the near term.

704 Corporate Credit Unions

Part 704 sets forth the rules governing corporate credit unions. The rule was substantially revised in 2010. In 2011, the Board further amended the rule by: (1) making technical corrections; (2) adding enterprise risk management and internal control and reporting requirements; and (3) clarifying other provisions. Also in 2011, the Board issued the final credit ratings rule discussed above, which also affected several provisions in Part 704.

We have received public comment on this rule suggesting modifications to certain capital, credit risk management, asset-liability management, and liquidity management provisions. We have considered these suggestions but do not believe changes in these areas are warranted at this time.

Commenters also suggested changes to or delayed implementation of certain audit and enterprise risk management (ERM) requirements. The audit provision, at §704.15(b)(2), states that a corporate's independent public accountant must attest to management's assertion regarding the effectiveness of the corporate's internal controls. This provision takes effect January 1, 2014. The ERM provision, at §704.21, states that a corporate's ERM committee must include an independent risk management expert with certain qualifications. This provision takes effect April 29, 2013. Each of these provisions entails a significant expenditure of funds on the part of the corporate, but we believe these provisions are important to the safety and soundness of corporates.

705 Community Development Revolving Loan Fund Access for Credit Unions

Part 705 implements the Community Development Revolving Loan Program for credit unions. This rule was recently comprehensively revised, with final amendments issued by the Board in October 2011. The revisions updated the rule to more accurately reflect the procedures by which technical assistance grants and community development loans are made. Given these recent revisions, together with having received no public comments on this rule, we do not believe any revisions are warranted at this time.

706 Unfair or Deceptive Acts or Practices

The Dodd-Frank Act removed the authority for NCUA and certain other regulators to adopt and enforce regulations on unfair or deceptive acts and practices and granted it to the CFPB. We will reflect this transfer of authority in our regulations.

707 Truth in Savings

This rule 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 prescribed by CFPB for other depository institutions. We will monitor CFPB amendments to truth in savings regulations and follow suit as required by statute.

708a Bank Conversions and Mergers

This regulation governs applications for conversions to banks. NCUA adopted substantial 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 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 federally insured credit unions. We are currently working on additional revisions to the member voting and communication requirements to improve consumer protection based on situations encountered in several recent conversions. These revisions include clarifying that the timeframe for NCUA to review draft member communications is normally 30 days but it may take longer depending on the length and complexity of these communications and clarifying procedures for forwarding communications requested by members.

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 currently developing additional revisions for Part 708b. A possible change in the merger context is a requirement for the member notices to explicitly state whether the branch office and ATM locations of the merging credit union will be retained. Possible changes in the area of insurance conversions include: (1) a clarification that credit unions may not send communications to members in advance of the board's adoption of a conversion resolution; (2) changes to the required size and placement of NCUA's boxed warning about the loss of federal deposit insurance coverage so that the warning is less likely to be obscured by other text; and (3) revisions to the member ballot so that credit unions do not insert information that dilutes the warning about the loss of federal deposit insurance.

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. This regulation was last amended in 2004. Changes to Part 750 involving golden parachute and indemnification payments in 2011 rendered some of the payout priorities in §709.5(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(2) is inappropriate. Accordingly, we recommend removing the reference in §709.5(2) to severance pay.

710 Voluntary Liquidation

This rule sets forth the requirements for voluntary liquidation of FCUs. In 2007, a technical amendment was made to the introductory text of §710.3(a) to remove a reference to NCUA's FCU Bylaws. We recommend numerous revisions to update and clarify the rule including: (1) revising §710.6(c) to clarify that voluntarily liquidating credit unions can distribute funds by wire or other means as well as by mail; (2) permitting liquidation plans and notices to creditors to be sent electronically; and (3) updating the monetary thresholds for publication requirements and de minimus exclusion for accounts from distribution.