

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

RIN 3133-AD79

Share Insurance and Appendix

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: Section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)¹ provides that, on a temporary basis, the NCUA Board shall fully insure the net amount that any member or depositor at an insured credit union maintains in a noninterest-bearing transaction account. Although this insurance coverage is self-implementing, and therefore already in place, this proposed rule: (1)

¹ Public Law 111-203 (July 21, 2010).

clarifies the definition of the term “noninterest-bearing transaction account;” (2) provides that this new insurance coverage is separate from, and in addition to, other coverage provided in NCUA’s share insurance rules; and (3) imposes certain notice and disclosure requirements.

DATES: Comments must be received on or before [Insert date 60 days from date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments 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.
- NCUA Web Site:
http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include “[Your name] Comments on Proposed Rule 745, Share Insurance and Appendix” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

PUBLIC INSPECTION: All public comments are available on the agency’s website at <http://www.ncua.gov/RegulationsOpinionsLaws/comments> as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA’s law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Senior Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

I. The Dodd-Frank Act

Section 343 of the Dodd-Frank Act amends the Federal Credit Union Act (FCU Act) to include full share insurance coverage, beyond the Standard Maximum Share Insurance Amount (SMSIA),² for the net amount held in a noninterest-bearing transaction account by any member or depositor at an insured credit union. Throughout this proposal, the term “noninterest-bearing” should be read as including “nondividend-bearing” to translate the provisions of the Dodd-Frank Act into credit union terminology.³ Insured

² The SMSIA is defined as \$250,000. 12 CFR §745.1(e).

³ Federal credit unions cannot offer interest-bearing accounts; they can only pay dividends pursuant to the Federal Credit Union Act. Some state chartered, federally

credit unions are not required to take any action to receive this additional insurance coverage. The additional coverage provided by Section 343 of the Dodd-Frank Act is temporary through December 31, 2012.

II. The Proposed Rule

Amendments to Share Insurance Rules

Section 343 of the Dodd-Frank Act amends the share insurance provisions of the FCU Act (12 U.S.C. 1787(k)(1)) to provide separate insurance coverage for noninterest-bearing transaction accounts. Accordingly, as discussed in detail below, NCUA proposes to revise its share insurance regulations in 12 CFR Part 745 to include this new temporary share insurance account category.

Definition of Noninterest-Bearing Transaction Account

The proposed rule incorporates the definition of noninterest-bearing transaction account in section 343 of the Dodd-Frank Act. Section 343 defines a noninterest-bearing transaction account as “an account or deposit maintained at an insured credit union with respect to which interest is neither accrued nor paid; on which the account holder or depositor is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and on which the insured credit union does not reserve the right to require advance notice of an intended withdrawal.” This definition of noninterest-bearing transaction

insured credit unions may offer interest-bearing accounts pursuant to their state credit union acts.

account encompasses only traditional, noninterest-bearing demand deposit (checking or share draft) accounts that allow for an unlimited number of deposits and withdrawals at any time,⁴ whether held by a business, an individual, or other type of member. It does not include negotiable order of withdrawal (NOW) accounts, money-market accounts (MMA), or Interest on Lawyers Trust Accounts (IOLTA).

Under this proposal, whether an account is considered noninterest-bearing or nondividend bearing is determined by the terms of the account agreement and not by the fact that the dividend rate on an account may be zero percent at a particular point in time. For example, an insured credit union might offer an account with a dividend rate of zero percent except when the balance exceeds a prescribed threshold. Similarly, an account that normally bears dividends might have a dividend rate of zero for a particular period if the board of directors of the insured credit union where the account is maintained determines not to, or is prohibited from, declaring a dividend for that period. Such an account would not qualify as a noninterest-bearing transaction account even when the balance is less than the prescribed threshold or no dividend is declared and the dividend rate is zero percent for a particular period. Under the proposed rule, such an account would be treated as an interest-bearing or dividend-bearing account at all

⁴ The NCUA Board does not believe the general provisions of Article III, Section 5(a) of the Federal Credit Union Bylaws, or other similar provisions, affect the definition of noninterest-bearing transaction account or the share insurance coverage of this kind of account. Article III, Section 5(a) of the bylaws states that with respect to member withdrawals from share accounts, the federal credit union's board of directors has the right, at any time, to require members to give up to 60 days written notice of intention to withdraw the whole or any part of the amounts paid in by members. The NCUA Board considers this a broad, administrative provision that does not alter the nature of an account that otherwise satisfies the definition of a noninterest-bearing transaction account.

times because the account agreement provides for the payment of dividends under certain circumstances. However, the waiving of fees on an account would not be treated as the earning of dividends. For example, an insured credit union can sometimes waive fees or provide fee-reducing credits for members with share draft accounts. Under the proposed rule, such account features would not prevent an account from qualifying as a noninterest-bearing transaction account, as long as the account otherwise satisfies the definition of a noninterest-bearing transaction account.

The proposed rule's definition of noninterest-bearing transaction account would include official checks issued by insured credit unions, such as negotiable cashier's or certified checks. Ownership of such instruments and the right to full insurance coverage are determined pursuant to §745.11 of NCUA's share insurance rules regarding accounts evidenced by negotiable instruments.

Funds swept (or transferred) from a share account to either another type of share account or a non-deposit account are treated as being in the account to which the funds were transferred prior to the time of failure. For example, if pursuant to an agreement between an insured credit union and its member, funds are swept daily from a noninterest-bearing transaction account to an account or product that is not a noninterest-bearing transaction account, then the funds in the resulting account or product would not be eligible for full insurance coverage as a noninterest-bearing transaction account. However, the proposed rule includes an exception from this treatment of swept funds in situations where funds are swept from a noninterest-bearing

transaction account to a noninterest-bearing savings account, such as an MMA. Often referred to as "reserve sweeps," these products could entail an arrangement in which a single account is divided into two sub-accounts, a transaction account and an MMA. The amount and frequency of sweeps are often determined by an algorithm designed to minimize required reserves. In some situations, members may be unaware that this sweep mechanism is in place. Under the proposed rule, such accounts would be considered noninterest-bearing transaction accounts. Apart from this exception for reserve sweeps, MMAs and noninterest-bearing savings accounts do not qualify as noninterest-bearing transaction accounts.

Insurance Coverage

As noted, pursuant to section 343 of the Dodd-Frank Act, all funds held in noninterest-bearing transaction accounts are fully insured, without limit. As also specifically provided for in section 343 of the Dodd-Frank Act, this unlimited coverage is separate from, and in addition to, the coverage provided to members with respect to other accounts held at an insured credit union. This means that funds held in noninterest-bearing transaction accounts will not be counted for purposes of determining the amount of share insurance on shares held in other accounts, and in other rights and capacities, at the same insured credit union. For example, if a member has a \$225,000 share certificate and a no-dividend share draft account with a balance of \$300,000, both held in a single ownership capacity, he or she would be fully insured for \$525,000 (plus dividends accrued on the share certificate), assuming the member has no other single-ownership funds at the same credit union. First, coverage of \$225,000 (plus accrued

dividends) would be provided for the share certificate as a single ownership account (12 CFR §745.3) up to the SMSIA of \$250,000. Second, full coverage of the \$300,000 share draft account would be provided separately, despite the share draft account also being held as a single ownership account, because the account qualifies for unlimited separate coverage as a noninterest-bearing transaction account.

Disclosure and Notice Requirements

NCUA proposes notice and disclosure requirements to ensure that credit union members are aware of and understand what types of accounts will be covered by the temporary share insurance coverage for noninterest-bearing transaction accounts.

There are two such requirements. As explained in detail below, insured credit unions must post a prescribed notice in their main office, each branch and, if applicable, on their Web site, and insured credit unions must notify members individually of any action they take to affect the share insurance coverage of funds held in noninterest-bearing transaction accounts.

1. Posted Notice

The proposed rule would require each insured credit union that offers noninterest-bearing transaction accounts to post, prominently, a copy of the following notice in the lobby of its main office, in each branch and, if it offers internet deposit services, on its Web site:

NOTICE OF CHANGES IN TEMPORARY NCUA INSURANCE COVERAGE FOR

TRANSACTION ACCOUNTS

In accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act, through December 31, 2012, all funds in "noninterest-bearing transaction accounts" are insured in full by the National Credit Union Administration. This unlimited coverage is in addition to, and separate from, the coverage of at least \$250,000 available to members under the NCUA's general share insurance rules.

The term "noninterest-bearing transaction account" includes a traditional share draft account (or demand deposit account) on which the insured credit union pays no dividend. It does *not* include any transaction account that may earn dividends, such as a negotiable order of withdrawal ("NOW") account, money-market account, or Interest on Lawyers Trust Account ("IOLTA"), even if share drafts may be drawn on the account.

The temporary full insurance coverage of "noninterest-bearing transaction accounts" expires on December 31, 2012. After December 31, 2012, funds in noninterest-bearing transaction accounts will be insured under the NCUA's general share insurance rules, subject to the Standard Maximum Share Insurance Amount of \$250,000.

For more information about NCUA insurance coverage of transaction accounts, visit <http://www.ncua.gov>.

2. Notice to Sweep Account and Other Members Whose Coverage on Noninterest-

Bearing Transaction Accounts Is Affected by an Insured Credit Union Action

Under the proposed notice requirements, if an insured credit union modifies the terms of its account agreement so that the account may pay dividends, the insured credit union must notify affected members that the account no longer will be eligible for full share insurance coverage as a noninterest-bearing transaction account. Though such notifications would be mandatory, the proposed rule does not impose specific requirements regarding the form of the notice. Rather, NCUA would expect insured credit unions to act in a commercially reasonable manner and to comply with applicable state and federal laws and regulations in informing members of changes to their account agreements.

III. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small credit unions (those under \$ 10 million in assets). The proposed amendments enhance share insurance coverage for members with no significant direct cost to credit unions. Accordingly, the NCUA has determined and certifies that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions within the meaning of the Regulatory Flexibility Act, [5 U.S.C. 601-612](#).

Paperwork Reduction Act

In accordance with section 3512 of the Paperwork Reduction Act of 1995 ("PRA"), [44](#)

[U.S.C. 3501](#) *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget ("OMB") control number. This Notice of Proposed Rulemaking ("NPR") contains disclosure requirements, some of which implicate PRA as more fully explained below.

The proposed new disclosure requirements are contained in sections 745.14(c)(1) and 745.14(c)(2). More specifically, section 745.14(c)(1) would require that each insured credit union that offers noninterest-bearing transaction accounts post a "Notice of Changes In Temporary NCUA Insurance Coverage For Transaction Accounts" in the lobby of its main office and domestic branches and, if it offers internet deposit services, on its Web site. Section 745.14(c)(2) would require that insured credit unions notify members of any action that affects the share insurance coverage of their funds held in noninterest-bearing transaction accounts.

The disclosure requirement in section 745.14(c)(1) would normally be subject to PRA. However, because NCUA has provided the specific text for the notice and allows for no variance in the language, the disclosure is excluded from coverage under PRA because "the public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included" within the definition of "collection of information." 5 CFR 1320.3(c)(2). Therefore, NCUA is not submitting the section 745.14(c)(1) disclosure to OMB for review.

The disclosure requirement in section 745.14(c)(2) regarding sweep accounts and any action that affects the share insurance coverage of funds held in noninterest-bearing transaction accounts is mandatory for all insured credit unions, although insured credit unions would retain flexibility regarding the form of the notice. Therefore, in conjunction with publication of this NPR, NCUA is submitting to OMB a request to review the estimated burden associated with this disclosure requirement.

The estimated burden for the proposed new disclosure under section 745.14(c)(2) is as follows:

Title: "Disclosure of Share Account Status."

Affected Public: Insured credit unions.

Estimated Number of Respondents: 150.

Frequency of Response: On occasion (average of once per year per credit union).

Average Time per Response: 8 hours.

Estimated Annual Burden: 1,200 hours.

Comments are invited on:

(a) Whether this collection of information is necessary for the proper performance of NCUA functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodologies and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments may be submitted to NCUA by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: Address to regcomments@ncua.gov. Include “[Your name] Comments on PRA Collection for Proposed Rule 745, Share Insurance and Appendix” in the e-mail subject line.

- Fax: (703) 518-6319. Use the subject line described above for e-mail.

- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- Hand Delivery/Courier: Same as mail address.

Comments may also be submitted to the OMB Desk Officer for the NCUA, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503 with a copy to Mary Rupp, Secretary of the Board, NCUA, 1775 Duke Street, Alexandria, VA 22314. All comments should refer to the "Share Insurance Regulations--Unlimited Coverage for Noninterest-Bearing Transaction Accounts."

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. The proposed rule would not have 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. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

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

NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, [Pub. L. 105-277](#), [112 Stat. 2681](#) (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed amendments are understandable and minimally intrusive if implemented as proposed.

List of Subjects

12 CFR Part 745

Credit unions, Share insurance.

By the National Credit Union Administration Board on December 16, 2010.

Mary F. Rupp

Secretary of the Board

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

PART 745 — SHARE INSURANCE AND APPENDIX

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.

2. Amend section 745.1 by adding a new paragraph (f) to read as follows:

§ 745.1 Definitions.

* * * * *

(f) The term *noninterest-bearing transaction account* means an account or deposit maintained at an insured credit union--

(1) with respect to which either interest or dividends are neither accrued nor paid;

(2) on which the account holder or depositor is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and

(3) on which the insured credit union does not reserve the right to require advance notice of an intended withdrawal.

3. Add §745.14 to read as follows:

§745.14 Noninterest-bearing transaction accounts.

(a) *Separate insurance coverage.* Through December 31, 2012, a member's funds in a "noninterest-bearing transaction account" (as defined in §745.1(f) of this part) are fully insured, irrespective of the SMSIA. Such insurance coverage shall be separate from the coverage provided for other accounts maintained at the same insured credit union.

(b) *Certain swept funds.* NCUA will treat funds swept from a noninterest-bearing transaction account to a noninterest-bearing savings deposit account as being in a noninterest-bearing transaction account.

(c) *Disclosure and notice requirements.* (1) Each insured credit union that offers noninterest-bearing transaction accounts must post prominently the following notice in the lobby of its main office, in each branch and, if it offers internet deposit services, on its Web site:

NOTICE OF CHANGES IN TEMPORARY NCUA INSURANCE COVERAGE FOR TRANSACTION ACCOUNTS

In accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act, through December 31, 2012, all funds in "noninterest-bearing transaction accounts" are insured in full by the National Credit Union Administration. This unlimited coverage is in addition to, and separate from, the coverage of at least \$250,000 available to members under the NCUA's general share insurance rules.

The term "noninterest-bearing transaction account" includes a traditional share draft account (or demand deposit account) on which the insured credit union pays no interest or dividend. It does *not* include any transaction account that may earn interest or dividends, such as a negotiable order of withdrawal ("NOW") account, money-market

account, or Interest on Lawyers Trust Account ("IOLTA"), even if share drafts may be drawn on the account.

The temporary full insurance coverage of "noninterest-bearing transaction accounts" expires on December 31, 2012. After December 31, 2012, funds in noninterest-bearing transaction accounts will be insured under the NCUA's general share insurance rules, subject to the Standard Maximum Share Insurance Amount of \$250,000.

For more information about NCUA insurance coverage of transaction accounts, visit <http://www.ncua.gov>.

(2) If an insured credit union uses sweep arrangements, modifies the terms of an account, or takes other actions that result in funds no longer being eligible for full coverage under this section, the insured credit union must notify affected members and clearly advise them, in writing, that such actions will affect their share insurance coverage.