

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 705

RIN 3133-AD91

Community Development Revolving Loan Fund

AGENCY: National Credit Union Administration (NCUA)

ACTION: Proposed rule.

SUMMARY: NCUA proposes to change its rule governing the process by which the agency solicits, receives, evaluates, and acts on credit union applications seeking loans and technical assistance grants from the Community Development Revolving Loan Fund (CDRLF or Fund). The proposed changes update the current rule to improve transparency and are intended to improve its organization, structure, and ease of use by credit unions. The revisions do not reflect a change to the fundamental mission of the CDRLF, but instead remove unnecessary detail and outdated processes in the current rule while adding clarification and flexibility. The proposal also clarifies the application process and adds requirements addressing reporting and monitoring.

DATES: Comments must be received on or before [INSERT DATE THAT IS 60 DAYS AFTER 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 705, CDRLF Amendments” 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.

FOR FURTHER INFORMATION CONTACT: Pamela Williams, Credit Union Program Analyst, Office of Small Credit Union Initiatives, or Justin Anderson, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6643 (Ms. Williams) or (703) 518-6540 (Mr. Anderson).

SUPPLEMENTARY INFORMATION:

A. Background.

The CDRLF was created by Congress in 1979 with an initial appropriation of \$6 million and has been administered exclusively by NCUA since 1986. Through subsequent appropriations and earnings on Fund assets, the Fund has grown to over \$19.7 million as of the end of the first quarter of 2011. The Fund serves as a source of financial support, in the form of both loans and technical assistance grants, for credit unions serving predominantly low-income members. It also serves as a source of funding to help low-income credit unions respond to emergencies arising in their communities. The NCUA Board (the Board) has delegated to the Office of Small Credit Union Initiatives authority to make the determination of how to allocate the finite resources of the Fund among qualifying credit unions. Awards provided through the CDRLF Program have strengthened credit unions by enabling them to increase their capacity to support the communities in which they operate. This increased capacity has allowed credit unions to provide basic financial services to low-income residents of these communities, resulting in more opportunities for residents of the credit unions' communities to improve their financial circumstances.

The technical assistance grant portion of the CDRLF provides funds to low-income credit unions so that they may extend services to their members and improve their operations. The source of awards includes appropriated funds, current year earnings, and a portion of prior years' retained earnings.

Through the loan portion of the CDRLF, low-income credit unions may receive funds to support a variety of financial and related services designed to meet the particular needs of members and the low-income communities served. In years where Congress has not appropriated funds for loans, funding has come from scheduled loan repayments of prior loans.

Part 705 has been largely unchanged, in substantive terms, since 1993. In the years following, significant enhancements, including changes in technology, have altered the way in which NCUA retrieves and uses data from credit unions. The proposed changes in this rule, which comprehensively revise part 705, reflect these changes and are designed to reduce the burden on credit unions. The proposed changes remove some of the detail in the current rule dealing with administrative aspects of the program to provide the agency with greater flexibility to make changes and variations to suit specific circumstances. Other changes add detail to the rule, for example, regarding how NCUA evaluates applications, to provide greater transparency and better knowledge and information to prospective applicants. The changes also add a new section addressing reporting to and monitoring by NCUA, which is designed to help the agency assure that an award from the Fund is used in the manner and for the purposes represented by the credit unions receiving loans or grants. On balance, the rule is streamlined and the burden imposed on credit unions seeking an award from the Fund is reduced.

B. Changes in Low-income Designation Criteria.

In November 2008, the Board amended its low-income rule to change the criteria by which credit unions serving primarily low-income members are designated. 73 FR 71909 (November 26, 2008). NCUA further clarified this change in August 2010. 75 FR 47171 (August 5, 2010). As more fully discussed in the preambles to those rulemakings, NCUA changed the standard for measuring member income from median household income to median family income. 12 CFR §701.34. By cross reference, which is retained in this proposal, Part 705 uses the low-income standard promulgated in the 2008 rule making and clarified in 2010.

C. Section by Section Analysis.

§705.1 Authority, Purpose and Scope. This section combines and summarizes the essential elements in the first three sections of the current rule. The only substantive change is driven by the Board's recognition of the burden associated with determining whether one of the specific purposes of the program, as described in current §705.2(a)(2), is being met. The Board recognizes that the requirement for credit unions to measure "income, ownership, and employment opportunities for low-income residents in communities they serve" is difficult because of the lack of available data. The Board believes it would be beneficial to replace the quoted language currently in this section of the rule with the following more precise and measurable standard: "NCUA anticipates the financial awards provided will better enable them to support the communities in which they operate; providing basic financial services to low-income residents of these communities, resulting in more opportunities for the residents to

improve their financial circumstances.” 12 CFR 705.1(d) (proposed). The Board believes this proposed language provides a better description of the actual impact awards from the Fund can have on credit unions, their membership, and their communities. This section would also contain a general statement that any loans or technical assistance grants from the Fund are subject to NCUA’s discretion and funds availability. 12 CFR §705.1(b) (proposed). The Board believes it is beneficial to include this general statement in this section rather than repeating it throughout the proposal to ensure a concise, streamlined rule.

§705.2 Definitions. The current rule has only two definitions: “low-income members” and “participating credit unions.” 12 CFR §705.3 (current rule). The 2008 amendment, discussed above, by which the criteria for determining whether a credit union qualifies for low-income designation affected the definition of low-income members. This proposal retains the definition of “low-income members,” as amended. With respect to the definition of “participating credit unions,” this proposal modifies that definition and also defines “qualifying credit unions,” which is a new term. These definitions retain much of the language in the current definition of “participating credit unions,” but do contain new language, which the Board believes will protect the Fund and better reflect agency practice. Under this proposal a “qualifying credit union” is one that may be or has agreed to be examined by NCUA and holds a current low-income designation. The proposal clarifies that low-income designations are pursuant to §701.34 for federal credit unions and §741.204 for federally insured state-chartered credit unions. Section 701.34 states that low-income designations for federal credit unions will be made by the

appropriate NCUA Regional Director, and, §741.204 states that low-income designations for federally insured state-chartered credit unions must be made by the appropriate state regulator in accordance with the requirements in §701.34(a) and have the concurrence of the appropriate NCUA Regional Director. 12 CFR §§701.34 and 741.204. In addition, this proposal states that low-income designations for nonfederally insured state-chartered credit unions must be made by the appropriate state regulator under applicable state standards with the concurrence of NCUA. As mentioned above, the definition of “qualifying credit union,” under this proposal, would apply to only those credit unions that NCUA may examine or agree to be examined by NCUA. The Board believes this requirement will allow NCUA to obtain all relevant information about a credit union’s financial condition, so that it can make the most prudent and responsible choices among credit union applicants seeking awards from the Fund without excluding credit unions interested in awards from the Fund. The Board notes that there has traditionally been very limited interest by nonfederally insured state-chartered credit unions, which are not subject to examination by NCUA, in awards from the CDRLF. If a non-federally insured credit union is interested in participation, it would have to agree to examination by NCUA. The proposed revised definition of a “participating credit union” is a qualifying credit union that has submitted an application that has been approved by NCUA. Other newly defined terms in the proposal, including Notice of Funding Opportunity, Application, Loan and Technical Assistance Grant, are self-explanatory and designed to supplement the substantive sections of the proposal dealing with those respective issues.

§705.3 Eligibility. This section, which encompasses material from several sections in the current rule, is designed to establish the criteria by which credit unions will be considered eligible to apply for and receive financial assistance from the Fund. Subsection (a) states that, to be eligible to receive an award, a credit union must complete an application and meet the underwriting criteria established by NCUA.

§705.4. Permissible Uses of Loan Funds. The Board has included, in this section, examples of permissible uses of loan funds received from the CDRLF. The Board believes it will be helpful for the rule to provide examples of the types of programs and uses that can be supported through loans from the Fund. In addition to listing basic examples, the proposal notes that NCUA will announce in the Notice of Funding Opportunity other funding priorities and permissible uses of loan funds. Permissible uses of technical assistance grants are discussed in §705.10 of this proposal.

§705.5. Terms and Conditions. This section simplifies the current rule by eliminating much of the information presently set out in §§ 705.5 and 705.7. The intent of this proposed section is to confirm that, with respect to loans, NCUA will establish the terms and conditions governing the loan in separate loan documents. The proposed rule does, however, provide some detail on the maximum loan amount, the interest rate, repayment, acceleration, and matching requirements. With respect to the maximum loan amount, the Board acknowledges in this proposal that generally the maximum loan amount is \$300,000, but NCUA may make loans that exceed this amount in certain circumstances. A list of factors NCUA would consider in deciding to make a loan in

excess of \$300,000 will be included in the Notice of Funding Opportunity rather than in this proposal to preserve maximum flexibility for the agency to address changing circumstances that would necessitate the need for higher amount loans. The Board has also included a portion of current §705.7(a), which states that at NCUA's discretion, a loan from the Fund must be recorded as a note payable or nonmember deposit.

Also in this proposal, the Board has eliminated the range of interest rates that may be charged on a loan from the Fund, which is currently set in the rule at 1% to 3%. Instead, the Board proposes to reference the CDRLF's Interest Rate Policy, which has been in effect since January 2008 and is located on NCUA's website. NCUA will include the specific interest rate for a funding in the Notice of Funding Opportunity. This again will ensure maximum flexibility for NCUA to set interest rates that are appropriate for the particular economic climate at the time of a funding and the needs of credit unions.

This portion of the proposal also incorporates language from current §§705.7(b),(c), and (e) addressing repayment, maturity, matching, and acceleration. These sections are unchanged from the current rule except that the matching requirement in the current section is now at NCUA's option rather than expressly required. The current rule states that "generally," monies obtained from the Fund "must be matched" by the participating credit union. This proposal makes the matching requirement expressly optional at NCUA's discretion based on the financial condition of the credit union. This proposed change will enable the agency to more readily employ its judgment and

experience in determining whether matching will be beneficial and necessary in any given case. This proposal does, however, retain §§ 705.7(b)(1), (2), and (3) from the current rule that address the requirements for a credit union that must provide matching funds. These requirements have been largely unchanged, but do provide more flexibility for NCUA to determine how to address matching funds on a case-by-case basis. For example, the statement that all member share deposits will be credited as a two-for-one match has been deleted. This section also clarifies that all matching funds must be from non-governmental sources. 12 CFR §705.5(g) (proposed). The Board notes that this requirement is consistent with other community development lending programs and believes it is necessary to ensure that credit unions do not become too reliant or completely dependent on governmental sources of funding. Additional requirements for matching funds will be included in the loan documents with a credit union required to provide matching funds. 12 CFR §705.5(g) (proposed).

This section concludes with a general statement that other terms and conditions of loans from the Fund will be included in the Notice of Funding Opportunity and applicable loan documents. 12 CFR §705.5(h) (proposed rule). The Board believes it is prudent to preserve its flexibility by addressing other specific details concerning the loan in the Notice of Funding Opportunity and loan documents, which can be more readily adapted to change and adjusted as circumstances and experience warrant.

§705.6. Application and Award Processes. As discussed below, this section would combine portions of §§705.5 and 705.9 of the current rule as well as add expanded

explanation and direction about the application and award processes. The Board believes this section of the proposed rule provides transparency and clarity about the way in which a credit union applies for funds and NCUA renders a decision on that application. Each subsection of this section is discussed in detail below.

(a) Notice of Funding Opportunity. This section corresponds to current §705.9 but would provide more detail about how and where NCUA will publicly announce loan and technical assistance grant program initiatives. In addition to publishing Notices of Funds Opportunity in the *Federal Register*, NCUA will follow federal government protocol and post its current program initiatives on the government's basic internet portal for financial award programs (currently at <http://www.grants.gov>), and will also post information on its own website. This process conforms to current agency practice, as does the discussion in this section about how NCUA also provides direct notice of program opportunities through Letters to Credit Unions and its electronic mail service, *NCUA Express*. Also, to increase flexibility, the Board proposes to delete the requirement that NCUA publish this notice annually.

(b) Application Requirements. This section would incorporate provisions from §§705.5(a), (b)(1), and (b)(5) of the current regulation, which address the information an applicant credit union must provide when applying for financial awards from the CDRLF. In this respect, the proposal notes that NCUA would require a credit union to provide a narrative about how the credit union intends to use the money from the Fund to enhance the products and services it provides to its members and how those enhanced

products or services will support the economic development of the community served by the credit union. This proposed aspect replaces the current requirement that a credit union develop a Community Needs Plan. (See current §705.6). The Board believes that replacing the Community Needs Plan will provide a better instruction for credit unions developing this portion of the application and reduce the burden on applicant credit unions to provide an additional plan. This subsection also addresses the additional information that is required from nonfederally insured credit unions. This information was carried over from §705.5 of the current rule, and, for the reasons discussed, above adds the requirement that nonfederally insured state-chartered credit unions agree to be examined by NCUA.

(c) *Evaluation and Selection of Participating Credit Unions.* This new subsection is consistent with the Board's goal of enhancing transparency in how the agency makes decisions. Specifically, this proposed subsection describes the criteria that NCUA will generally evaluate in deciding among competing applications seeking limited funds, including financial and performance considerations, whether the proposed uses of funds are compatible with program goals, and whether the credit union is likely to be successful in accomplishing its stated objectives. NCUA, however, will not be confined to only considering these criteria and could consider any other criteria identified in the Notice of Funding Opportunity it deems relevant depending upon the funding initiative, economic environment, or other factors. Given that requests for funding routinely exceed available funds, the Board believes this subsection will provide useful information that will help credit unions in developing and refining their applications and

understanding how the agency makes its determinations. In addition, this proposed subsection states that, with regard to Qualifying Federal Credit Unions, NCUA will consult and consider information from the examination staff that conducted the applicant credit union's most recent examination and will seek the concurrence of the applicant credit union's supervising Regional Director before an award is made. Consultation with examination staff and Regional Director has been a matter of practice and the Board believes including it in this section will improve transparency. Information relating to the examination of a Qualifying State-chartered Credit Union is addressed in §705.8, which is discussed below.

(d) *Requests for Additional Information.* This new proposed subsection articulates that NCUA may require additional information from applicants before rendering its decision, and will do so using its discretion to choose the applicants that are likely to be the most successful in carrying out the purpose of the Program. This subsection also states that failure to provide the requested information may result in NCUA rejecting the application.

(e) *Timing.* This new subsection states that NCUA will include a timeframe to submit all requested information in the Notice of Funding Opportunity and that failure to submit all of the requested information by the stated deadline may result in NCUA rejecting the application without further consideration.

(f) *Notice of Award and Appeals.* This new subsection, which contains some substantive information in the current §705.5(c), articulates that NCUA will notify applicant credit unions as to whether or not they have qualified for a loan or technical assistance grant. This subsection would also follow the approach taken in the current rule with respect to appeals, which is to acknowledge that any credit union submitting an application for either a loan or a technical assistance grant that is considered nonqualified may appeal that decision to the NCUA Board. The proposal makes clear that the scope of review by the Board is limited to the threshold question of qualification and not the issue of whether, among qualified applicants, a particular loan or technical assistance grant is funded. Awards from the Fund are discretionary and that determination is not subject to administrative appeal to the Board. Information on appealing denials of technical assistance grant reimbursements is discussed below in §705.10.

(g) *Disbursement.* This new subsection states that before NCUA will disburse a loan, the Participating Credit Union must sign all applicable loan documents and the promissory note. This section also states that NCUA may, in its discretion, choose not to disburse the entire loan at once.

§705.7. *Urgency.* This new section specifically acknowledges that, on an emergency basis, NCUA may consider a funding request from a qualifying credit union experiencing an unplanned or unexpected expense that the credit union is unable to meet with its own resources. The credit union will be required to demonstrate a compelling need for

immediate action or attention without which its continued operations would be threatened or severely disrupted. NCUA will evaluate these applications to determine if emergency funding is warranted. Urgent needs for funding are not part of any specific initiative, but rather an ongoing process that will not be included in specific Notices of Funds Opportunity. The Board notes in this proposal, however, that technical assistance grants and loans provided under this section should not be a regular source of funding for credit unions and credit unions must still exhibit a purpose consistent with the goals of the Fund.

§705.8 Qualifying State-chartered Credit Unions. This section incorporates language from §705.8 of the current regulation, which articulates requirements that are specific to state-chartered credit unions. These requirements include obtaining written concurrence from the credit union's state regulatory authority, making state examination reports available to NCUA and agreeing to examination by NCUA for the purpose of compliance with this part. The requirement in this section relating to an examination is in addition to a general requirement that to be eligible, a credit union must be able to be or agree to be examined by NCUA. The Board notes that to qualify for awards from the Fund, NCUA must be able to examine the entire financial condition of the credit union, whereas an examination under this proposed subsection allows NCUA to examine the credit union only to verify compliance with this Part.

§705.9. Reporting and Monitoring. This new section is designed to provide the framework for the way in which the agency assures that recipients of awards from the

Fund actually use the money they receive for its intended purposes. In this respect, the Board intends this proposal will clarify NCUA's practices of monitoring the use of CDRLF funding to ensure and document that credit unions use the funds for the intended purposes. The proposed rule first establishes that NCUA's policy in this respect is to do such monitoring. The proposal goes on to describe two methods the agency will employ in this regard: first, reporting by participating credit unions, at such times and in such formats as NCUA shall direct, of the uses to which funds have been made and the results that have been obtained; and second, NCUA may elect to review information to which it already has access, including information obtained from the examination process and call reports, for verification and monitoring purposes.

§705.10. Technical Assistance Grants. This section of the proposal incorporates much of the text in current §705.10 and makes a general reference to the funding of technical assistance grants and preserves maximum flexibility in the establishment of amounts and other terms and conditions. The proposal does acknowledge that, as a general rule, technical assistance grants are provided on a reimbursement basis to cover expenditures approved in advance and supported by receipts. This section also includes a new subsection that discusses the appeal rights for technical assistance grant reimbursement denials in accordance with NCUA Interpretative Ruling and Policy Statement (IRPS) 11-1. 76 FR 3674 (January 20, 2011). IRPS 11-1 provides that technical assistance grant reimbursement denials may only be appealed to NCUA's Supervisory Review Committee. Credit unions must make appeals under this IRPS within 30 days from the date of the denial. *Id.* Also, with respect to appeals, this

section states that the determination of NCUA's Supervisory Review Committee is final and its decisions are not appealable to the Board.

REGULATORY PROCEDURES

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities. NCUA considers credit unions having less than ten million dollars in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87-2 as amended by IRPS 03-2. The proposed revisions to part 705 are designed to update and streamline the rule, thereby reducing the burden for credit unions that are seeking financial awards, whether in the form of a technical assistance grant or a loan, from NCUA. Moreover, the rule implements a program that is entirely voluntary on the part of credit unions. It has no impact on credit unions that elect not to pursue this funding opportunity. NCUA has determined and certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that an RFA analysis is not required.

Paperwork Reduction Act

There are aspects of the CDRLF Program that involve information collection within the meaning of the Paperwork Reduction Act of 1995 (PRA). 44 U.S.C. 3507(d).

Previously, NCUA sought and obtained Office of Management and Budget (OMB) approval for its use of certain documents, including the application and the report forms used to monitor and follow up on the uses credit unions have made of funds provided under the technical assistance grant and loan programs. These documents have been assigned OMB Control No. 3133-0137, which remained valid through December 2010.

The proposed rule eliminates much of the detail from current sections 705.5 and 705.7 and provides that terms and conditions pertaining to loans from the Fund will be governed in separate loan documents. These documents, which will be required to obtain loan funds from the CDRLF, constitute information collections within the meaning of the PRA. Accordingly, NCUA intends to secure OMB approval, through an application for reinstatement of OMB Control No. 3133-0137, to include a promissory note and a loan agreement under that number. As required by the PRA, NCUA is submitting a copy of this proposed regulation as part of its request for OMB approval of reinstatement of this previously approved information collection. Since the prior number has expired, NCUA believes it is prudent and appropriate to seek approval for reinstatement of the previously approved control number.

The proposed rule contemplates that credit unions that are approved for loans from the Fund will be required to execute a promissory note and a loan agreement. NCUA estimates approximately fifteen credit unions will be approved for loans per year. NCUA also estimates it will take a credit union approximately two hours to review, evaluate and execute the loan documents, noting in particular that the credit union must attach, as an

exhibit to the loan agreement, a duly executed board resolution confirming the decision to borrow the funds has been approved by the board and that the individual executing the note on behalf of the credit union has been duly authorized to do so.

The loan agreement also calls for a report describing the use of loan proceeds, the impact of any new programs supported or funded by loan proceeds, and any obstacles encountered affecting the credit union's ability to accomplish the objectives identified in its loan application. This report must be provided to NCUA annually. NCUA estimates the burden associated with this reporting to be another two hours per year. On average, there are about 50 loans outstanding at any given time for which reporting may be necessary.

The loan agreement also contemplates that other information about a credit union's business, operations and financial condition may be requested by NCUA from time to time, if necessary to permit the Fund to maintain or perfect its security interest in collateral or to otherwise fully effectuate the purposes of the loan agreement. NCUA estimates it will request this additional information only with respect to ten percent of outstanding loans and that the burden associated with compliance with this request will be four hours.

This yields an estimated annual burden of 150 hours for this information collection, as broken out and itemized below:

a. Promissory Note and Loan Agreement.

Average number of new loans annually:	15
Annual hour burden:	2

$$2 \text{ hours} \times 15 = 30$$

b. Regular Annual Reports .

Number of respondents:	50
Frequency of response:	annually
Annual hour burden:	2

$$2 \text{ hours} \times 50 = 100$$

c. Irregular Reports as requested by NCUA:

Number of respondents:	5
Frequency of response:	annually
Annual hour burden:	4

$$4 \text{ hours} \times 5 = 20$$

$$\text{Total hours: } 30 + 100 + 20 = 150$$

Organizations and individuals that wish to submit comments on this information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10226, New Executive Office Building, Washington, DC 20503, with a copy to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

The NCUA considers comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the NCUA, including whether the information will have a practical use;
- Evaluating the accuracy of the NCUA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

The Paperwork Reduction Act requires OMB to make a decision concerning the collection of information contained in the proposed regulation between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the NCUA on the proposed regulation.

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 financial award programs administered through the CDRLF are available to FCUs as well as to state chartered credit unions. By law, state chartered institutions with federal share insurance are already subject to numerous provisions of NCUA's rules, based on the agency's role as the insurer of member share accounts and the significant interest NCUA has in the safety and soundness of their operations. In any event, the proposed rule will not have substantial direct effects on the states, on the relationship 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 proposal 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

The NCUA has determined that this proposed rule will 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 comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 705

Credit unions, loans, grants, revolving fund, community programs, low income.

By the National Credit Union Administration Board on May 11, 2011

Mary F. Rupp
Secretary of the Board

Accordingly, NCUA proposes to amend 12 CFR part 705 as follows:

Part 705 COMMUNITY DEVELOPMENT REVOLVING LOAN FUND FOR CREDIT UNIONS

1. The authority citation for part 705 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786.

2. Revise part 705 as follows:

COMMUNITY DEVELOPMENT REVOLVING LOAN FUND FOR CREDIT UNIONS

Sec.

§705.1 Authority, purpose and scope

§705.2 Definitions

§705.3 Eligibility requirements

§705.4 Permissible uses of loan funds

§705.5 Terms and conditions

§705.6 Application and awards processes

§705.7 Urgency

§705.8 Qualifying state-chartered credit unions

§705.9 Reporting and monitoring

§705.10 Technical assistance grants

§705.1 Authority, purpose and scope.

(a) Part 705 is issued by the National Credit Union Administration (NCUA) under §130 of the Federal Credit Union Act, 12 U.S.C. §1772c-1, which implements the Community Development Credit Union Revolving Loan Fund Transfer Act (Pub. L. 99-609, 100 Stat. 3475 (November 6, 1986)).

(b) This Part describes how NCUA makes money available to credit unions from its Community Development Revolving Loan Fund (Fund). NCUA administers the Fund and makes both loans and technical assistance grants to credit unions in accordance with the eligibility criteria and other qualifications, and subject to the terms and conditions set out in this Part. All loans and technical assistance grants made under this Part are subject to funds availability and NCUA's discretion.

(c) The Fund is intended to support the efforts of credit unions through loans and technical assistance grants needed for:

(1) Providing basic financial and related services to residents in their communities;

(2) Enhancing their capacity to better serve their members and the communities in which they operate; and

(3) Responding to emergencies.

(d) The policy of NCUA is to revolve funds to credit unions as often as practical in order to gain maximum economic impact on as many credit unions as possible. NCUA anticipates the financial awards provided to credit unions through the Fund will better enable them to support the communities in which they operate; providing basic financial

services to low-income residents of these communities, resulting in more opportunities for the residents to improve their financial circumstances.

(e) This Part generally establishes the following:

(1) Definitions;

(2) The application process and requirements for qualifying for a loan from the Fund;

(3) The evaluation process;

(4) How loan funds are to be made available and their repayment; and

(5) Technical assistance grants to be provided to credit unions.

§705.2 Definitions.

(a) For purposes of this Part, the following terms shall have the meanings assigned to them in this section.

(1) *Administrator* means the office within NCUA to which the Board has delegated authority to administer the Fund, including the authority to establish priorities for funding initiatives, receiving and evaluating applications and making

determinations among competing applications about which applications should be funded.

(2) *Application* means a form supplied by the NCUA by which a Qualifying Credit Union may apply for a loan or a technical assistance grant from the Fund.

(3) *Board* refers to the National Credit Union Administration Board.

(4) *Credit Union* means a credit union chartered under the Federal Credit Union Act or under the laws of any state of the United States.

(5) *Fund* means the Community Development Revolving Loan Fund.

(6) *Loan* is an extension of credit from the Fund to a Participating Credit Union that must be repaid, with interest.

(7) *Low-income Members* are those members defined in §701.34 of this chapter.

(8) *Notice of Funding Opportunity*, as more fully described in §705.6 of this Part, means the notice NCUA publishes describing one or more loan or technical assistance grant programs or initiatives currently being supported by the Fund and inviting interested Qualifying Credit Unions to submit applications to participate in the program(s) or initiative(s).

(9) *Participating Credit Union* refers to a Qualifying Credit Union that has submitted an application for a loan or a technical assistance grant from the Fund that has been approved by NCUA. A Participating Credit Union shall not be deemed to be an agency, department or instrumentality of the United States because of its receipt of a financial award from the Fund.

(10) *Program* means the Community Development Revolving Loan Fund Program under which NCUA makes loans and technical assistance grants available to credit unions.

(11) *Qualifying Credit Union* means a credit union that may be or has agreed to be examined by NCUA, with a current low-income designation pursuant to §701.34(a)(1) or §741.204 of this chapter or, in the case of a state-chartered nonfederally insured credit union, a low-income designation from a state regulator, made under appropriate state standards with the concurrence of NCUA. Services to low-income members must include, at a minimum, share account and loan services.

(12) *Technical Assistance Grant* means an award of money from the Fund to a Participating Credit Union that does not have to be repaid.

§705.3 Eligibility requirements.

(a) To be eligible to receive an award, in the form of either a loan or a technical assistance grant from the Fund, a Qualifying Credit Union must, within the time frames specified in any Notice of Funding Opportunity, also:

(1) Complete and submit an application; and

(2) Meet the underwriting standards established by NCUA, including any pertaining to financial viability, as set forth in the application and any related materials developed by NCUA.

§705.4 Permissible uses of loan funds.

(a) NCUA may make loans from the Fund to Participating Credit Unions for various uses. The following is a non-exhaustive list of examples of permissible uses or projects:

(1) Development of new products or services for members, including new or expanded electronic banking facilities, share draft programs, credit card programs, security and disaster recovery programs, or other operational programs;

(2) Partnership arrangements with community based service organizations or government agencies;

(3) Loan programs, including, but not limited to, micro business loans, payday loan alternatives, education loans, and real estate loans; and

(4) Acquisition, expansion or improvement of office space or equipment, including branch facilities and ATMs.

(b) In addition to the examples listed in subsection (a) of this section, NCUA may identify other funding priorities and uses in the Notice of Funding Opportunity, which is discussed in §705.6 of this Part.

§705.5 Terms and Conditions.

(a) NCUA may make loans, in such amounts and subject to such terms and conditions as it may determine, from the Fund to Participating Credit Unions for any of the examples identified in §705.4 of this Part or as identified in a particular Notice of Funding Opportunity.

(b) *Funding Limits.* Loans may be granted in amounts up to \$300,000 in the aggregate, depending on the creditworthiness of the Qualifying Credit Union, financial need, and a demonstrated capability of the Qualifying Credit Union to provide financial and related services to its members. NCUA may, however, make loans that exceed \$300,000 in certain circumstances. NCUA will include in the Notice of Funding Opportunity the particular criteria used to evaluate an application for a loan that exceeds \$300,000.

(c) *Recording of a loan.* At the discretion of NCUA, a loan will be recorded by a Participating Credit Union as either a note payable or a nonmember deposit.

(d) *Interest rate.* The rate of interest on loans is governed by the CDRLF Loan Interest Rate Policy, which can be found on NCUA's website or by contacting NCUA's Office of Small Credit Union Initiatives. The specific interest rate for a particular funding will be announced in the Notice of Funding Opportunity. The Board will announce changes, if any, to the CDRLF Loan Interest Rate Policy and those changes will apply to loans made under future Notices of Funding Opportunity.

(e) *Repayment and maturity.* (1) Awards made available through loans, whether recorded as a note payable or nonmember deposit are in the form of a loan and must be repaid to NCUA. All loans will be scheduled for repayment within the shortest time compatible with sound business practices and the objectives of the Program, but in no case will the term exceed five years.

(2) Semiannual interest payments (beginning six months after the initial distribution of a loan) and semiannual principal payments (beginning one year after the initial distribution of a loan) will be required.

(f) *Acceleration.* The terms of each loan agreement will provide for the immediate acceleration of the unpaid balance for breach or default in the performance by the

Participating Credit Union of the terms or conditions of the loan. Default and breach will include misrepresentation; failure to make interest or principal payments; failure to report; insolvency; and failure, if required by NCUA, to maintain adequate matching funds for the duration of the loan period. Other specific causes of default and breach will be identified in the loan documents between the Participating Credit Union and NCUA. The unpaid balance will also be accelerated and immediately due if any part of the loan funds are improperly used or if uninvested loan proceeds remain unused for an unreasonable or unjustified period of time.

(g) *Matching requirements.* NCUA may require a Participating Credit Union to develop and implement a plan to match all or a portion of the funds represented by loan proceeds. Such requirement will be based on the financial condition of the Participating Credit Union, which will be evaluated under criteria contained in the Notice of Funding Opportunity. Matching funds must be from non-governmental member or nonmember share deposits. Participating Credit Unions required to provide matching funds are subject to the following general provisions and any other conditions in the Notice of Funding Opportunity and agreements between the Participating Credit Union and the Administrator:

(1) Generally loan monies made available must be matched by the Participating Credit Union in an amount equal to the loan amount. Any loan monies matched by nonmember share deposits are not subject to the 20% limitation on nonmember deposits under §701.32 of this Chapter. Participating Credit Unions

must maintain the increase in the total amount of share deposits for the duration of the loan. Once the loan is repaid, nonmember share deposits accepted to meet the matching requirement are subject to §701.32 of this Chapter.

(2) Upon approval of its loan application, and before it meets its matching requirement, a Participating Credit Union may receive the entire loan commitment in a single payment. If any funds are withheld, the remainder of the funds committed will be available to the Participating Credit Union only after it has documented that it has met the match requirement.

(3) Failure of a Participating Credit Union to generate the required match within the time specified in the loan documents may result in the reduction of the loan proportionate to the amount of match actually generated. Payment of any additional funds initially approved may be limited as appropriate to reflect the revised amount of the loan approved. Any funds already advanced to the Participating Credit Union in excess of the revised amount of loan approval must be repaid immediately to NCUA. Failure to repay such funds to NCUA upon demand may result in the default of the entire loan.

(h) Other terms and conditions pertaining to loans, including but not necessarily limited to duration, repayment obligations, and covenants, will be specified in the Notice of Funding Opportunity and applicable loan documents to be signed by the Participating Credit Union.

§705.6 Application and award processes.

(a) *Notice of Funding Opportunity.* NCUA will publish a Notice of Funding Opportunity in the Federal Register, on all applicable government websites, and its own website, describing the loan and technical assistance grant programs for the period in which funds are available. The Notice of Funding Opportunity will announce special initiatives, the amount of funds available, funding priorities, permissible uses of funds, funding limits, deadlines, and other pertinent details. The Notice of Funding Opportunity will also advise potential applicants on how to obtain an application and any related materials.

(1) NCUA may supplement the information contained in the Notice of Funding Opportunity through such other media as it determines appropriate, including Letters to Credit Unions, direct notices to Qualifying Credit Unions, and announcements on its website.

(b) *Application requirements.* An application for a loan must provide information demonstrating the Qualifying Credit Union's sound financial position and ability to manage its day-to-day business affairs, including the Qualifying Credit Union's financial projections and planned use of proceeds consistent with the purpose of the Program, requirements of this Part, and the Notice of Funding Opportunity.

(1) Applications to participate and qualify for a loan or technical assistance grant under the Program may be obtained from the National Credit Union Administration, Community Development Revolving Loan Program for Credit Unions as outlined in the Notice of Funds Opportunity.

(2) With respect to loans, NCUA will also require a Qualifying Credit Union to develop and submit a narrative describing how the Qualifying Credit Union intends to use the money obtained from the Fund to enhance the products or services it provides to its membership and how those enhanced products or services support the membership and community served by the Qualifying Credit Union. The Notice of Funding Opportunity may include additional details and requirements.

(3) In addition to those items required in this section, a Qualifying Nonfederally Insured Credit Union must also include the following:

(i) A copy of its most recent external audit report;

(ii) Proof of deposit and surety bond insurance which states the maximum insurance levels permitted by the policies;

(iii) A balance sheet, an income and expense statement, and a schedule of delinquent loans, for each of the four most recent quarter-ends;

(iv) A description of any other involvement in existing community development programs of state and federal agencies; and

(v) An agreement to be subject to examination by NCUA.

(c) *Evaluation and Selection of Qualifying Credit Unions.* NCUA will generally evaluate applications submitted by Qualifying Credit Unions in accordance with the criteria described in this section. Nothing in this section, however, precludes NCUA from considering other criteria included in the Notice of Funding Opportunity that NCUA determines to be necessary based on the type of funding initiative, economic environment, or other factors or conditions that warrant the evaluation of additional or alternative criteria. Generally, complete applications will be evaluated by NCUA to determine if the Qualifying Credit Union satisfies the following:

(1) *Financial and Performance.* The Qualifying Credit Union must exhibit a safe and sound financial condition, including a demonstrated ability to perform the requirements associated with the type of award being sought and compliance with NCUA's underwriting standards. In this respect, NCUA will consider the Qualifying Credit Union's long term financial viability, including absence of indicators suggesting the Qualifying Credit Union is a candidate for merger, a purchase and assumption transaction, or conservatorship. NCUA will also consider the Qualifying Credit Union's compliance with the provisions of any

previous loan or technical assistance grant received. NCUA may also consider information concerning the Qualifying Credit Union, to which it already has access, including information obtained through the examination process and data contained in Call Reports.

(2) *Compatibility.* NCUA will evaluate whether the stated objectives to be accomplished through the use of the loan or technical assistance grant proceeds conform to the broad purposes and rationale underlying the Fund. Specifically, NCUA will consider whether the award will enable the Qualifying Credit Union to provide basic financial products and related services to its members or enhance its capacity to better serve its members and the community in which it operates. NCUA will also consider whether the use of the financial award will conform to any applicable funding priority, special initiative, or special instruction announced in the Notice of Funding Opportunity.

(3) *Feasibility.* NCUA will consider the likelihood of the Qualifying Credit Union being successful in accomplishing its stated objectives, based on its application and the factors NCUA determines are relevant.

(4) *Examination Information and Concurrence from Regional Director for Qualifying Federal Credit Unions.* NCUA will consider information and statements provided by NCUA staff or State Supervisory Authority staff that performed the Qualifying Credit Union's most recent examination in evaluating

the Qualifying Credit Union. NCUA will only provide a loan or a technical assistance grant to a Qualifying Federally-insured Credit Union with the concurrence of the Credit Union's supervising Regional Director. Examination information for Qualifying State-chartered Credit Unions is discussed in §705.8 of this Part.

(d) *Requests for additional information.* NCUA will make its funding determinations among the several qualified applications using its discretion and considering which best meet the priorities and initiatives established and announced by NCUA. During its evaluation process, however, NCUA may request a Qualifying Credit Union provide additional clarifying or technical information to support its application. NCUA may determine not to provide further consideration of any application failing to provide additional required information.

(e) *Timing.* NCUA will announce, in the Notice of Funding Opportunity, the deadline for Qualifying Credit Unions to submit all required documentation including the application. Failure to submit all of the requested information or to submit the information within the timeframe specified in the Notice of Funding Opportunity may result in NCUA rejecting the application without further consideration.

(f) *Notice of Award and Appeals.* The Administrator will make an initial determination as to whether an application meets NCUA's standards established by this Part and the Notice of Funding Opportunity. The Administrator will provide written notice to a

Qualifying Credit Union as to whether or not it has qualified for a loan or technical assistance grant under this Part. A Qualifying Credit Union whose application has been denied for failure of a qualification may appeal that decision to the NCUA Board in accordance with the following:

(1) Within thirty days of its receipt of a notice of non-qualification, a credit union may appeal the Administrator's decision to the NCUA Board. The scope of the NCUA Board's review is limited to the threshold question of qualification and not the issue of whether, among qualified applicants, a particular loan or technical assistance grant is funded.

(2) The foregoing procedure shall apply only with respect to applications received by NCUA during an open period in which funds are available and NCUA has called for applications. Any application submitted by an applicant during a period in which NCUA has not called for applications will be rejected, except for those applications submitted under §705.7 if this section, and such rejection shall not be subject to appeal or review by the NCUA Board.

(g) *Disbursement.* Before NCUA will disburse a loan, the Participating Credit Union must sign the loan agreement, promissory note, and any other loan related documents. NCUA may, in its discretion, choose not to disburse the entire amount of the loan at once.

§705.7 Urgency.

(a) On an emergency basis, subject to funds availability, NCUA may consider a funding request from a Qualifying Credit Union experiencing an unplanned or unexpected expense that the Qualifying Credit Union is unable to meet with its own resources. The Qualifying Credit Union must demonstrate a compelling need for immediate action or attention without which its continued operations would be threatened or severely disrupted. NCUA, in its discretion, will determine whether the situation constitutes an emergency and if the Qualifying Credit Union is required to submit any additional information to show why the funds are needed on an emergency basis. The Administrator will determine and substantiate any reason to expedite funding in such case. Requests for loans or technical assistance grants under this section will be addressed on an ongoing basis and are outside the scope of the Notice of Funding Opportunity. Technical assistance grants and loans provided on this basis must still exhibit a purpose consistent with the goals of the Fund. Loans and technical assistance grants made under this section are not anticipated to be a regular source of funding for any one or more Qualifying Credit Unions.

§705.8 Qualifying state-chartered credit unions.

(a) A Qualifying State-chartered Credit Union that has submitted an application to NCUA for participation must obtain written concurrence from its respective state regulatory authority before NCUA will approve its application. A Qualifying State-chartered Credit Union must also make copies of its state examination reports available to NCUA and must agree to examination by NCUA for the limited purpose of

compliance with this Part. An agreement to examination under this section is in addition to the requirement in §705.6(b)(3)(v) of this Part, which requires non-federally insured, state-chartered credit unions to agree to be examined by NCUA as a condition of qualification under the Program.

§705.9 Reporting and monitoring.

(a) *General.* NCUA's policy is to monitor Participating Credit Unions to assure that loan and technical assistance grant funds awarded under this Part have been used in accordance with their intended purposes and to determine whether anticipated outcomes have been achieved. Particular emphasis will be placed on reviewing loan funds earmarked for programs or initiatives proposed by the Participating Credit Union to determine if the funds have been used as represented and whether the program or initiative has had the impact anticipated by the Participating Credit Union.

(b) *Reporting.* A Participating Credit Union must complete and submit all required reports, at such times and in such formats as NCUA will direct. Such reports must describe how the Participating Credit Union has used the loan or technical assistance grant proceeds and the results it has obtained, in relation to the programs, policies or initiatives identified by the Participating Credit Union in its application. In addition, the Participating Credit Union's board of directors must report on the progress of providing needed community services to the Participating Credit Union's members once a year, either at the annual meeting or in a written report sent to all members. The Participating Credit Union must also submit the written report or a summary of the report given at the

annual meeting to NCUA. NCUA may request additional information as it determines appropriate.

(c) *Monitoring.* At its discretion, for verification purposes, NCUA may elect to review information concerning Participating Credit Unions, to which it already has access, including information obtained through the examination process and data contained in Call Reports, as part of its evaluation of the effectiveness of the loan and technical assistance grant programs.

§705.10 Technical assistance grants.

(a) Technical assistance grants may be funded in such amounts, and in accordance with such terms and conditions, as NCUA may establish. In general, technical assistance grants are provided on a reimbursement basis, to cover expenditures approved in advance by NCUA and supported by receipts evidencing payment by the Participating Credit Union.

(1) *Permissible uses of technical assistance grant funds.* Sections 705.4(a) and (b) of this part also apply to technical assistance grants made under this section and provide examples and other information with respect to the permissible use of funds from the CDRLF. In addition, technical assistance grants generally should enhance and support the Participating Credit Union's internal capacity to

serve its members and better enable it to provide financial services to the community in which the Participating Credit Union is located.

(2) Appeals of technical assistance grant reimbursement denials.

Notwithstanding §705.6(e), pursuant to NCUA Interpretative Ruling and Policy Statement 11-1, any Participating Credit Union may appeal a determination of the Administrator to deny a technical assistance grant reimbursement to NCUA's Supervisory Review Committee. All appeals of technical assistance grant reimbursements must be submitted to the Supervisory Review Committee within 30 days from the date of the denial. The decisions of the Supervisory Review Committee are final and are not appealable to the NCUA Board.