

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 705 and 741

RIN 3133-AD91

Community Development Revolving Loan Fund Access For Credit Unions

AGENCY: National Credit Union Administration (NCUA)

ACTION: Final rule.

SUMMARY: NCUA is issuing a final rule to change its regulation governing the process by which the agency solicits, receives, evaluates, and acts on credit union applications for loans and technical assistance grants from the Community Development Revolving Loan Fund (CDRLF or Fund). The changes update the rule to increase 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revisions do not reflect a change to the fundamental mission of the CDRLF, but instead remove unnecessary detail and outdated processes in the regulation while adding clarification and flexibility. The final rule also clarifies the application process and adds requirements addressing reporting and monitoring.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

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

SUPPLEMENTARY INFORMATION:

A. Background

On May 19, 2011, the NCUA Board (Board) issued a Notice of Proposed Rulemaking (proposal or proposed rule) to make comprehensive revisions to part 705, which governs the process by which the agency solicits, receives, evaluates, and acts on credit union applications for loans and technical assistance grants from the CDRLF. 76 FR 30286 (May 25, 2011). The CDRLF was created by Congress in 1979 and has been administered exclusively by NCUA since 1986. The Fund, with over \$17.6 million in assets as of June 30, 2011, 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 Board has delegated

to the Office of Small Credit Union Initiatives (OSCUI) authority to make the determination of how to allocate the finite resources of the Fund among qualifying credit unions.

The proposed rule was intended to streamline the regulation, reduce burdens, and better reflect the technological changes that have taken place since the regulation's last substantive amendment in 1993. The proposal removed some of the detail in the regulation dealing with administrative aspects of the program to provide the agency with greater flexibility to make changes to suit specific circumstances. Other proposed revisions added detail to the rule. For example, to provide greater transparency and better guidance and information to prospective applicants, the proposed rule included information about how NCUA evaluates applications. Additionally, the proposal added a new section addressing reports to and monitoring by NCUA. This new section was designed to help the agency assure that an award from the Fund is used in the manner and for the purposes represented by the recipient credit unions.

B. Summary of Comments

The public comment period for the proposed rule closed on July 25, 2011. Four commenters responded: two credit union trade associations and two state credit union leagues. All commenters were generally supportive of the proposal. In particular, several expressed support for specific aspects of the proposal, including the examples of permissible loan fund uses; the increase in the maximum loan limit to provide loans in

excess of \$300,000; the removal of the mandatory requirement for matching funds; the elimination of the requirement for a Community Needs Plan; and the new section to permit NCUA, on an emergency basis, to provide CDRLF funds to credit unions with unplanned or unexpected expenses. Three commenters, however, offered suggestions for improvement on one or more aspects of the proposal. Of these, one commenter made a general suggestion that NCUA offer as much assistance as necessary to credit unions seeking CDRLF funds. The other two commenters offered more specific suggestions to improve or clarify the rule. NCUA has reviewed and analyzed the comment letters it received in response to the proposal and has adopted most of the public comments either by incorporation into the final rule or through related Notices of Funding Opportunities.

C. Final Rule

Title. The word “access” has been added to the title of this part to more accurately describe it. As noted above, the new name of the part is “Community Development Revolving Loan Fund Access for Credit Unions.

§705.1 Authority, Purpose and Scope. No commenters opposed the proposed changes to this section. Therefore, the Board is adopting §705.1 substantially as proposed. Minor grammatical modifications have been made for clarity. The final rule combines and summarizes the essential elements in the first three sections of the previous rule. It also contains revised language regarding NCUA’s expectations for the financial awards provided through the Fund. With these revisions, NCUA offers a more precise description of the impact that awards from the Fund can have on credit unions,

their membership, and their communities. In addition, this section contains 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). To achieve a more concise and streamlined rule, a general statement is included in this section rather than repeating it throughout the regulation.

§705.2 Definitions. The final rule adopts §705.2 substantially as proposed, with a few minor grammatical or typographical changes. In 2008, the Board amended the criteria for determining whether a credit union qualifies for low-income designation. 73 FR 71909 (Nov. 26, 2008); see also 75 FR 47171 (Aug. 5, 2010). The final rule's definition of "low-income members" reflects that change. The final rule also defines "qualifying credit unions," which was a newly defined term in the proposed rule. 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 final rule clarifies that low-income designations are made pursuant to §701.34 for federal credit unions and §741.204 for federally insured, state-chartered credit unions. For non-federally insured, state-chartered credit unions, low-income designations must be made by the appropriate state regulator under applicable state standards with the concurrence of NCUA. However, the definition of "qualifying credit union" applies only to those credit unions that NCUA may examine or that agree to be examined by NCUA. This requirement will enable 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. Thus, if a non-federally insured credit union is interested in participating in

the CDRLF program, it must first agree to examination by NCUA. The revised definition of “participating credit union” is a qualifying credit union that has submitted an application which has been approved by NCUA. Other newly defined terms in the final rule, including “notice of funding opportunity,” “application,” “loan,” and “technical assistance grant” are self-explanatory.

§705.3 Eligibility. This section is adopted as proposed, with minor typographical modifications. Under the final rule, a credit union must complete an application and meet the underwriting criteria established by NCUA in order to be eligible to receive an award.

§705.4. Permissible Uses of Loan Funds. Section 705.4 of the final rule includes examples of permissible uses of loan funds received from the CDRLF. This list is non-exhaustive and illustrative. Several commenters expressed support for this aspect of the proposal. Accordingly, the Board is adopting this section, substantially as proposed, in the final rule. Minor modifications have been made to clarify the examples given. The final rule also adds operational programs, such as security or disaster recovery, as another example of a permissible use. Additionally, NCUA may announce other funding priorities and provide examples of other permissible uses of loan funds in the related Notice of Funding Opportunity.

§705.5. Terms and Conditions. The final rule eliminates much of the information previously set out in former §§705.5 and 705.7. The final rule provides that NCUA will

establish the specific terms and conditions governing each particular loan in the related Notice of Funding Opportunity and the applicable loan documents. The rule also includes general information about the maximum loan amount, the interest rate, repayment, acceleration, and matching requirements.

The Board notes that the maximum loan amount is generally \$300,000, but loans may exceed this amount in certain circumstances. In the related Notice of Funding Opportunity, NCUA will include the factors it will consider when deciding whether to make a loan in excess of \$300,000.

To allow NCUA greater flexibility in establishing appropriate interest rates, the final rule eliminates specific reference to the range of interest rates that may be charged on a loan from the Fund (1% to 3% under the previous rule). Instead, it references the CDRLF's Interest Rate Policy, which is located on NCUA's website. The specific interest rate for a particular funding will be included in the related Notice of Funding Opportunity.

The final rule generally retains the previous rule's provisions addressing repayment, maturity, matching, and acceleration. One significant difference, however, is that the matching requirement is no longer mandatory. NCUA may require matching funds at its discretion, on a case-by-case basis, depending on the financial condition of the particular credit union. One commenter generally supported the elimination of the mandatory matching requirement, but suggested that NCUA should not require that

these funds be obtained from a non-government source. The Board emphasizes that the purpose of this requirement is to discourage credit unions from depending too heavily on government funding to support their operations. Allowing a credit union to match its CDRLF funding with other government funding would be contrary to this purpose. Accordingly, the final rule retains the non-government element of matching when required.

In addition, the final rule retains language indicating that, at NCUA's discretion, a loan from the Fund must be recorded as a note payable or nonmember deposit. One commenter asked for clarification regarding when a loan should be recorded as a note payable or nonmember deposit. The Board notes that specific information about how a credit union should record a loan from the Fund will be provided in the applicable loan agreement.

The final rule also provides that NCUA may allow flexible repayment of loan principal in some instances. Specific details about flexible repayment options will be provided in the related Notice of Funding Opportunity and other applicable program materials.

§705.6. Application and Award Processes. In order to increase transparency, the final rule combines key information about the CDRLF application and award processes into one streamlined section of the rule. This section also clarifies the way in which a credit union applies for funds and how NCUA renders a decision on that application. Each subsection is discussed in further detail below.

(a) Notice of Funding Opportunity. This subsection corresponds to former §705.9, but provides more detail about how and where NCUA will publicly announce loan and technical assistance grant program initiatives. The proposed rule eliminated the requirement that NCUA publish an annual notice of program opportunities in the Federal Register because information regarding program opportunities would be provided by various other means. One commenter suggested NCUA should continue to publish an annual notice, although another commenter disagreed. The final rule adopts this subsection as proposed. The Board emphasizes that Notices of Funding Opportunities will be published as often as necessary in the Federal Register. Information and notice of program opportunities will also be provided on NCUA's website (www.ncua.gov), provided through Letters to Credit Unions and the agency's electronic mail service, or publicized through various other means. In some cases, notices will be published more frequently than once a year. If there are no changes to the program or its requirements, however, notice is not necessary and will no longer be required annually under the final rule.

(b) Application Requirements. This section describes the information that applicant credit unions must provide to NCUA when applying for financial awards from the CDRLF. To simplify and streamline the application requirements, the final rule incorporates provisions from §§705.5(a), (b)(1), and (b)(5) of the previous rule. Additionally, to minimize burdens on applicants, the final rule eliminates the requirement that a credit union develop a Community Needs Plan (see former §705.6). Instead, an

applicant credit union must provide a written narrative describing how it intends to use a financial award from the Fund. The narrative should demonstrate that the award will enhance the products and services the credit union provides to its members. It also should describe how those enhanced products and services will support the economic development of the community served by the credit union.

Under the proposal, CDRLF loan applicants would be required to provide financial projections to support their applications. One commenter, however, raised concerns about the cost burden imposed by this requirement. This commenter also suggested that if financial projections are required, NCUA should provide a template to assist credit union in making its projections. In most cases, the Board does not anticipate that financial projections will be necessary to support the credit union's application.

Accordingly, the Board is removing this requirement from the final rule. If financial projections are necessary for a particular award, NCUA will request those projections through the related Notice of Funding Opportunity. The Board notes that OSCUI has provided training to credit unions on the development of financial projections, and NCUA will consider making operating tools such as a template available to credit unions.

This subsection also describes the additional information that is required from non-federally insured credit unions. Notably, under the final rule, non-federally insured, state-chartered credit unions must provide documentation of the credit union's status as

a low-income credit union. Also, non-federally insured, state-chartered credit unions must agree to be examined by NCUA.

(c) Evaluation and Selection of Participating Credit Unions. This subsection, which is substantively adopted as proposed, describes the criteria that NCUA will generally evaluate in deciding among competing applications for the limited CDRLF funds. As requests for funding routinely exceed available funds, the information provided in this subsection is intended to help credit unions develop and refine their applications. This information also will help credit unions better understand how the agency makes its determinations. For example, NCUA will consider 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. The Board notes, however, that other relevant criteria may be evaluated in the agency's selection process, depending on the funding initiative, economic environment, or other factors. Any other criteria that the agency will evaluate will be identified in the related Notice of Funding Opportunity.

Under the proposal, this subsection stated that, with regard to qualifying credit unions, NCUA will consult with and consider information from an applicant credit union's examiners. The proposed rule also required the concurrence of the applicant credit union's supervising Regional Director before an award is made. One commenter did not agree with this requirement. This commenter suggested that if a credit union meets NCUA's underwriting criteria for a loan, the lending decision should not also be subject

to the Regional Director's discretion. The Board disagrees. Assurance that a credit union is capable of effectively deploying, administering, and repaying the loan proceeds is necessary to NCUA's prudent management of this limited financial resource. The Board believes that input from the regional staff responsible for the direct supervision of the applicant credit union is an essential element of the evaluation process. It also will help ensure that awards from the Fund are appropriately distributed. The Board notes that consultation with examination staff and the Regional Director has been a matter of practice, and including the requirement in the regulation improves transparency.

(d) Requests for Additional Information. Under the final rule, NCUA may, at its discretion, require additional information from applicants before rendering its decision on an award. The failure to provide the requested information may result in rejection of the application.

(e) Timing. NCUA will include in the related Notice of Funding Opportunity a timeframe to submit all requested information. Where NCUA requests additional clarifying information for a particular credit union, the agency will also provide a deadline for the credit union to provide that information. A failure to submit all of the requested information by the stated deadline may result in rejection of the application without further consideration.

(f) Notice of Award and Appeals. This subsection describes the process by which NCUA will notify an applicant credit union whether it has qualified for a loan or request

for technical assistance. If its application is denied, a credit union may appeal that decision to the Board. A commenter expressed concern that a credit union that is considered nonqualified based on its application would not have the ability to appeal to the Board on the question of qualification. The Board notes that §705.6(f)(1) of the proposed rule, which is finalized in this rule, allows an applicant to appeal to the Board on the question of qualification. It is important to note, however, that the scope of Board's review on appeal 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.

(g) Disbursement. This subsection provides 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. One commenter suggested that if NCUA chooses not to disburse a particular loan all at once, it should provide written notice to the credit union with a schedule of release of subsequent loan funds and any performance measures that the credit union must meet in order to obtain the subsequent funds. The Board notes that the related Notice of Funding Opportunity will provide specific details about the disbursement process if a loan is not disbursed in a single payment.

§705.7. Urgency. The proposed rule provided 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. Several commenters expressed support for this provision and the Board adopts this section without substantive change.

Under the final rule, the credit union will be required to demonstrate a compelling need for immediate assistance 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 Funding Opportunities. The Board emphasizes that technical assistance grants and loans provided under this section are on an emergency basis and should not be a regular source of funding for credit unions. Credit unions requesting urgent funding must still demonstrate 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 previous regulation, and sets out the specific requirements that are applicable 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. In the proposal, an examination under this subsection would allow NCUA to examine the credit union only to verify compliance with this part. Upon consideration, however, the Board has determined that prudent management of the Fund requires NCUA to be able to examine the entire financial condition of a state-chartered credit union. Thus, the

final rule removes this limitation. Additionally, the Board notes that written concurrence from a state regulatory authority does not guarantee NCUA approval of a credit union's application.

§705.9. Reporting and Monitoring. The final rule establishes a new framework for NCUA to monitor the use of CDRLF funding to ensure that award recipients actually use the funds for intended purposes. Under the final rule, participating credit unions are required, at such times and in such formats as NCUA shall direct, to submit reports to describe how the funds have been used and the results that have been obtained. Additionally, NCUA may, at its discretion, review certain existing information, such as call report data and examination reports, to evaluate the effectiveness of the loan and technical assistance programs. One commenter raised concerns that the language permitting NCUA to require reporting "at such times and in such formats as NCUA shall direct" is overly broad. The Board notes that in the event NCUA requires reporting, it will provide specific detail about the post-award reporting requirements in the related Notice of Funding Opportunity. As such, credit unions will likely have ample advance notice of the nature and format of information that award recipients will be required to report.

§705.10. Technical Assistance Grants. Section 705.10 of the proposal is adopted, unchanged from the proposed rule. In general, technical assistance grants are provided on a reimbursement basis to cover expenditures approved in advance and supported by receipts. This section describes the permissible uses of technical assistance grant

funds and 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 (Jan. 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 within 30 days from the date of the denial. Id. The determination of NCUA's Supervisory Review Committee is final and its decisions may not be appealed to the Board.

D. Conforming Amendments

The Board is making two technical amendments to §701.32(c) and §741.207 to conform to the changes in this final rule. The conforming amendments modify existing cross-references to part 705.

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. IRPS 87-2, as amended by IRPS 03-2. The revisions to part 705 are designed to update and streamline the rule, thereby

reducing the burden for credit unions that are seeking CDRLF awards. 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 final rule does 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 report forms used to monitor and follow up on how credit unions have used CDRLF funds. These documents were assigned OMB Control No. 3133-0138, which remained valid through December 2010. Documentation was submitted with the proposed rule, however, it was incorrect. NCUA has corrected and resubmitted an application for reinstatement of OMB Control No. 3133-0138 for the CDRLF loan program. Comment has been requested on this submission. 76 FR 62456 (Oct. 7, 2011). Organizations and individuals that wish to submit comments on this information collection requirement must do so by November 7, 2011.

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. The final 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 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

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

List of Subjects

12 CFR Part 701

Advertising, Aged, Civil rights, Credit, Credit unions, Fair housing, Individuals with disabilities, Insurance, Marital status discrimination, Mortgages, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination, Signs and symbols, Surety bonds.

12 CFR Part 705

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

12 CFR Part 741

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on October 27, 2011.

Mary F. Rupp
Secretary of the Board

For the reasons discussed above, NCUA amends 12 CFR parts 701, 705, and 741 of title 12, chapter VII, of the Code of Federal Regulations as follows:

PART 701 ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C.1752(5), 1755, 1756, 1757, 1758, 1759, 1761A, 1761B, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq.; 42 U.S.C. 1981 and 3601-3610. Section 701.35 is also authorized by 42 U.S.C. 4311-4312.

2. Section 701.32 is amended by removing in paragraph (c) the citation “§705.7(b)” and adding in its place the citation “§705.5(g)”.

PART 705 COMMUNITY DEVELOPMENT REVOLVING LOAN FUND ACCESS FOR CREDIT UNIONS

3. 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.

4. Revise part 705 as follows:

COMMUNITY DEVELOPMENT REVOLVING LOAN FUND ACCESS 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 award 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 (Nov. 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, 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 members 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 achieve 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. With these awards, credit unions will be able to provide basic financial services to low-income members of these communities, resulting in more opportunities for these members 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.

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

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.

Board refers to the National Credit Union Administration Board.

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

Fund means the Community Development Revolving Loan Fund.

Loan is an award in the form of an extension of credit from the Fund to a Participating Credit Union that must be repaid, with interest.

Low-income Members are those members defined in §701.34 of this chapter.

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).

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 which 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.

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

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 non-federally insured, state-chartered 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, offering share accounts and loans.

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 a CDRLF award, in the form of either a loan or a technical assistance grant, a Qualifying Credit Union must, within the timeframes specified in any Notice of Funding Opportunity:

(1) Complete and submit an Application; and

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

§705.4 Permissible uses of loan funds.

NCUA may make loans from the Fund to Participating Credit Unions for various uses.

The following is a non-exhaustive list of permissible uses or projects:

(a) Development of new products or services for members, including new or expanded share draft or credit card programs;

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

(c) Loan programs, including, but not limited to, microbusiness loans, payday loan alternatives, education loans, and real estate loans;

(d) Acquisition, expansion, or improvement of office space or equipment, including branch facilities, ATMs, and electronic banking facilities; and

(e) Operational programs such as security or disaster recovery.

§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.

(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, its financial need, and its demonstrated capability 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 related 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 related 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 Opportunities.

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

(2) Interest payments will be required semiannually beginning six months after the initial distribution of a loan.

(3) NCUA may allow flexible repayment of loan principal. Details and specific provisions will be addressed in the Notice of Funding Opportunity and other program materials.

(f) Acceleration. The terms of each loan agreement will provide for the immediate acceleration of the unpaid balance for breach or default in performance by the Participating Credit Union of the terms or conditions of the loan. Default and breach include misrepresentation; failure to make interest or principal payments when due; failure to file required reports; insolvency of the Participating Credit Union; and, if required by NCUA, failure to maintain adequate matching funds for the duration of the loan. 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. At its discretion, 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 related 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 related Notice of Funding Opportunity and agreements between the Participating Credit Union and NCUA:

(1) Loan monies made available generally 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, if required, a Participating Credit Union may receive the entire loan commitment in a single payment. If, at NCUA's discretion, 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 related Notice of Funding Opportunity or 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 applicable government websites, and its own website. The

Notice of Funding Opportunity will describe the loan and technical assistance grant programs for the period in which funds are available. It also 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 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. A Qualifying Credit Union must demonstrate a sound financial position and ability to manage its day-to-day business affairs. It also must show that its planned use of proceeds is consistent with the purpose of the Program, the requirements of this Part, and the related Notice of Funding Opportunity. The related Notice of Funding Opportunity may include additional details and requirements.

(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 as outlined in the related Notice of Funding 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.

(3) In addition to those items required in this section, a Qualifying Credit Union that is a non-federally insured state-chartered 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) Documentation of the credit union's status as a low-income credit union by the appropriate state supervisory agency consistent with NCUA Rules and Regulations 701.34(a) and 741.204(b); 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 related 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, NCUA will evaluate complete applications 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 related Notice of Funding Opportunity.

(3) Feasibility. NCUA will consider the likelihood of the Qualifying Credit Union's success 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. In evaluating the Qualifying Credit Union, 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. NCUA will only provide a loan or a technical assistance grant to a Qualifying Credit Union with the concurrence of that credit union's supervising Regional Director. Examination information for a Qualifying Credit Union that is a state-chartered credit union is discussed in §705.8 of this Part.

(d) Requests for additional information. NCUA will make its funding determinations among the several qualified Applications based on its discretion and consideration of which best meet the priorities and initiatives established and announced by NCUA. During its evaluation process, however, NCUA may request a Qualifying Credit Union to 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 related 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, or in the case of requests for additional clarifying or technical information, within the time specified by NCUA, may result in rejection of the Application without further consideration.

(f) Notice of Award and Appeals. NCUA will determine whether an application meets NCUA's standards established by this Part and the related Notice of Funding Opportunity. NCUA 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 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 of this section. Any 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.

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 assistance 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. NCUA 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 related Notice of Funding Opportunity. Technical assistance grants and loans provided on this basis must still demonstrate 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 Qualifying Credit Unions.

§705.8 Qualifying State-Chartered credit unions.

A Qualifying Credit Union that is a state-chartered credit union and 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 Credit Union that is a state-chartered credit union must also make copies of its state examination reports available to NCUA and must agree to examination by NCUA.

§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 to NCUA the written report or a summary of the report given at the annual meeting. NCUA may request additional information as it determines appropriate.

(c) Monitoring. At its discretion, for verification purposes and as part of its evaluation of the effectiveness of the loan and technical assistance grant programs, 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.

§705.10 Technical assistance grants.

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.

(a) 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. Those sections provide examples and other information with respect to the permissible use of CDRLF funds. 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.

(b) Appeals of technical assistance grant reimbursement denials. Pursuant to NCUA Interpretative Ruling and Policy Statement 11-1, any Participating Credit Union may appeal a denial of 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 may not be appealed to the NCUA Board.

PART 741 REQUIREMENTS FOR INSURANCE

5. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781—1790, and 1790d; 31 U.S.C. 3717.

6. Section 741.207 is amended by removing the citation “§705.3” and adding in its place the citation “705.2”.