

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

RIN 3133-AE09

Designation of low-income status; Acceptance of secondary capital accounts by low-income designated credit unions.

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed Rule.

SUMMARY: The NCUA Board proposes to amend its low-income credit unions regulation by extending the time credit unions have to accept a low-income designation. Under the current rule, an FCU that has received notification from NCUA that it qualifies for a low-income designation has 30 days to notify NCUA that it wishes to receive the designation. Some FCUs may find it difficult to respond this quickly, so the proposed rule extends the response period to 90 days. The proposed rule also makes minor, nonsubstantive technical amendments to NCUA's insurance regulation to reflect current agency practice in this regard.

DATES: Comments must be received on or before [INSERT DATE THAT IS 30 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 Notice of Proposed Rulemaking for Parts 701 and 741, Designation of low-income status” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

PUBLIC INSPECTION: You may view all public comments on NCUA’s website at <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper

copies of comments in NCUA’s law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Associate General Counsel, or Pamela Yu, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6593.

SUPPLEMENTARY INFORMATION:

I. Background

II. Summary of the Proposed Rule

III. Regulatory Procedures

I. Background

A. What is a low-income credit union?

Under §701.34 of NCUA’s regulations, a low income credit union (LICU) is an FCU designated as such because a majority of its membership consists of “low-income members,” as defined by the NCUA Board.¹ Currently, the NCUA Board defines “low-income members” as those members whose family income is 80% or less than the total

¹ 12 CFR §701.34. A state-chartered credit union may obtain a LICU designation from its state supervisory authority with concurrence from NCUA. Benefits of the state LICU designation vary by state, based on applicable state law.

median earnings for individuals for the metropolitan area where they live or national metropolitan area, whichever is greater.²

B. What are the benefits of being designated a LICU?

The Federal Credit Union Act (Act) provides LICUs with certain statutory relief and other benefits.³ Some of the benefits include:

- Exemption from the statutory cap on member business lending;
- Authorization to accept non-member deposits from any source;
- Authorization to accept secondary capital; and
- Eligibility for assistance from the Community Development Revolving Loan Fund.

All of these provisions help a LICU to better serve its members and community.

II. Summary of the Proposed Rule

A. Why is NCUA proposing this rule?

Executive Order 13579 provides that independent agencies, including NCUA, should consider if they can modify, streamline, expand, or repeal existing rules to make their

² For members living outside a metropolitan area, NCUA will use the statewide or national, non-metropolitan area median family income instead of the metropolitan area or national metropolitan area median family income. 12 CFR §701.34(a)(2).

³ 12 U.S.C. 1752(5), 1757a(b)(2)(A), 1757a(c)(2)(B), 1772c-1.

programs more effective and less burdensome.⁴ Also, the NCUA Board has a policy of continually reviewing its regulations to “update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.”⁵ To carry out this internal policy, NCUA identifies one-third of its existing regulations for review each year and provides notice of this review so the public may comment. In 2012, NCUA is reviewing its LICU rule as part of this process.

Relative to these goals, the NCUA Board intends to provide regulatory relief to FCUs by improving the process for obtaining a LICU designation. Specifically, the NCUA Board believes that extending the timeframe in which a qualifying FCU may accept its LICU designation from 30 days to 90 days will make it easier for an eligible FCU to obtain its LICU designation, take advantage of the benefits afforded to LICUs, and better serve its members and community.

Additionally, the NCUA Board proposes several minor, nonsubstantive revisions to NCUA’s insurance regulation. The technical corrections are necessary to reflect current agency practice in this regard.

B. How would the proposed rule change the current rule?

Under the current rule, NCUA notifies an FCU that it qualifies for LICU designation if, based on examination data, NCUA determines that a majority of the FCU’s membership

⁴ E.O. 13579 (July 11, 2011).

⁵ NCUA Interpretive Ruling and Policy Statement (IRPS) 87-2, as amended by IRPS 03-2, Developing and Reviewing Government Regulations.

are low-income members.⁶ Once an FCU receives notification of its eligibility, it has 30 days to “opt-in” by providing written notice to NCUA that it wishes to receive the designation.⁷

The NCUA Board is aware that some FCUs believe that the LICU designation process is burdensome in some cases. In particular, some FCUs have stated that the 30-day timeframe to accept the LICU designation is too short for some credit unions. For example, it may take an FCU longer than 30 days to fully analyze if it wishes to accept the LICU designation or to obtain any necessary approval from its board of directors. Accordingly, the proposed rule would allow an FCU 90 days from the date of receipt of NCUA notification to provide written notice to NCUA that it wishes to receive the LICU designation. The NCUA Board believes this extra time will ease the burden of responding.

NCUA plans to notify FCUs of their eligibility on a periodic basis. An FCU that does not or is not able to respond to a particular NCUA notification in a timely manner will have additional opportunities to accept the designation in the future. Additionally, an FCU can relinquish its LICU status at any time, for any reason, simply by notifying NCUA in writing that it wishes to do so. While the NCUA Board believes such designation is advantageous to eligible FCUs, it proposes to make it just as easy to relinquish the designation as it is to accept it. An FCU that accepts the designation only needs to accept it once, after which NCUA will not send additional notifications.

⁶ 12 CFR §701.34(a)(1).

⁷ Id.

The NCUA Board also proposes minor technical corrections to NCUA's insurance regulation to update and conform it to current agency practice.⁸ Previously, regional directors had the delegated authority to designate FCUs as LICUs. Currently, NCUA's Office of Consumer Protection has that delegated authority. The proposal would update and amend §741.204 to remove references to "regional directors," and to replace those references with "NCUA".

C. Does the proposed rule create any new burdens for credit unions?

The proposal does not create any new regulatory burdens for credit unions. To the contrary, as mentioned above, the NCUA Board seeks to provide regulatory relief to FCUs that qualify for LICU designation. Similarly, the proposed changes to NCUA's insurance regulation are minor, nonsubstantive, and merely technical in nature. The technical amendments do not create any new or substantive requirements for credit unions.

III. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small

⁸ See 12 CFR 741.204.

entities (primarily those under ten million dollars in assets). This proposed rule would make nonsubstantive technical amendments and extend regulatory relief to FCUs. NCUA has determined and certifies that this proposed rule will not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.⁹ For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. As noted above, the proposed amendments would make minor technical corrections and extend regulatory relief. The proposal would not impose or modify paperwork burdens.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This proposed rule would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among

⁹ 44 U.S.C. 3507(d); 5 CFR part 1320.

the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

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, Public Law 105–277, 112 Stat. 2681 (1998).

E. Agency Regulatory Goal

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

List of Subjects

12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 741

Credit, Credit unions, Reporting and recordkeeping requirements, Share insurance.

By the National Credit Union Administration Board, on October 18, 2012.

Mary F. Rupp

Secretary of the Board

For the reasons stated above, NCUA proposes to amend 12 CFR parts 701 and 741 as follows:

PART 701 — ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

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

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; Title V, Pub. L. 109-351, 120 Stat. 1966.

2. Amend §701.34(a) to read as follows:

§701.34 Designation of low-income status; Acceptance of secondary capital accounts by low-income designated credit unions.

(a) Designation of low-income status. (1) Based on data obtained through examinations, NCUA will notify a federal credit union that it qualifies for designation as a low-income credit union if a majority of its membership qualifies as low-income members. A federal credit union that wishes to receive the designation must notify NCUA in writing within 90 days of receipt of any NCUA notifications.

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PART 741 — REQUIREMENTS FOR INSURANCE

Subpart A – Regulations Applicable to Both Federal Credit Unions and Federally Insured, State-Chartered Credit Unions That Are Not Codified Elsewhere in NCUA’s Regulations

3. The authority 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.

4. Amend §741.204 by:

- a. Removing the words “the appropriate regional director” wherever they appear and inserting in their place the word “NCUA”.
- b. Removing the words “the NCUA Regional Director” wherever they appear and inserting in their place the word “NCUA”.
- c. Removing the words “the appropriate NCUA Regional Director” wherever they appear and inserting in their place the word “NCUA”.

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