

**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:** Final rule.

**SUMMARY:** The NCUA Board (Board) is amending its low-income credit unions regulation by extending the time period in which a federal credit union (FCU) may accept a low-income designation. Under the current rule, an FCU that receives notice from NCUA of its eligibility for a low-income designation has 30 days to notify NCUA in writing that it wishes to accept the designation. The final rule extends an FCU's response time from 30 days to 90 days to make certain an FCU has adequate time to respond. The final rule also makes minor, nonsubstantive technical amendments to NCUA's requirements for insurance regulation to reflect current agency practice.

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

**FOR FURTHER INFORMATION CONTACT:** Frank Kressman, Associate General Counsel, or Pamela Yu, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428 or telephone (703) 518-6593.

**SUPPLEMENTARY INFORMATION:**

- I. Background and Proposal**
- II. Final Rule**
- III. Regulatory Procedures**

**I. Background and Proposal**

A. What is a low-income credit union?

An FCU qualifies as a low-income credit union (LICU) under NCUA's regulations if a majority of its membership consists of "low-income members," as defined by the Board.<sup>1</sup>

Currently, the Board defines "low-income members" as those members whose family

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<sup>1</sup> 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.

income is 80% or less than the total median earnings for individuals for the metropolitan area where they live or national metropolitan area, whichever is greater.<sup>2</sup>

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

The Federal Credit Union Act provides LICUs with statutory relief and other benefits.<sup>3</sup>

Examples of such relief and benefits include:

- Exemption from the statutory cap on member business loans;
- 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 benefits help a LICU better serve its members and community.

C. October 2012 proposal.

Executive Order 13579 provides that independent agencies, including NCUA, should consider if they can modify, streamline, expand, or repeal existing regulations to make their programs more effective and less burdensome.<sup>4</sup> Additionally, the Board has a policy of continually reviewing its regulations to “update, clarify and simplify existing

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<sup>2</sup> 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).

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

<sup>4</sup> E.O. 13579 (July 11, 2011).

regulations and eliminate redundant and unnecessary provisions.”<sup>5</sup> 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. NCUA reviewed the LICU rule as part of this process.

In October 2012, the Board proposed amendments to the LICU rule.<sup>6</sup> The Board was aware that some FCUs believed the LICU designation process was too burdensome in some cases. In particular, FCUs have stated that the requirement that an FCU accept the LICU designation within 30 days of having received notice of its eligibility from NCUA is too short for some FCUs. For example, they noted that it may take an FCU longer than 30 days to fully analyze if it wishes to accept the LICU designation or to obtain approval from its board of directors. Accordingly, the October 2012 proposal extended the acceptance time period from 30 days to 90 days. The Board believes that extending the timeframe to 90 days will make it easier for an eligible FCU to accept the LICU designation, take advantage of the benefits afforded to LICUs, and better serve its members and community. Overall, the proposal provided regulatory relief to FCUs and improved the LICU designation process.

Additionally, the proposal made several minor, nonsubstantive revisions to NCUA’s requirements for insurance regulation. These technical corrections are necessary to reflect current agency practice.

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

<sup>6</sup> 77 FR 65139 (Oct. 25, 2012).

## II. Final Rule

### A. Summary of comments on the October 2012 proposal.

NCUA received 5 comments on the October 2012 proposal. The comments were universally positive, and all commenters supported extending the acceptance time period to 90 days. Several commenters also noted the extended time period will allow an FCU sufficient time to determine if the designation fits with its strategic plans.

In addition, four commenters urged NCUA to further clarify the process for designating state-chartered, low-income credit unions as LICUs and to work with state regulators to ensure the state designation process is comparable to the federal process. The Board agrees that working with state regulators in this regard is worthwhile and would benefit state-chartered credit unions and their members.

### B. Why is the Board adopting this rule?

The Board is adopting the October 2012 proposed rule as a final rule without change for the same reasons it issued the October 2012 proposed rule. In short, the final rule provides FCUs with regulatory relief and improves the LICU designation process by giving eligible FCUs sufficient time to: (1) evaluate the benefits of having the designation; (2) determine if having the designation is consistent with their strategic plans; and (3) obtain FCU board of directors' approval. The final rule also enables more

eligible FCUs to accept the LICU designation to better serve their members and communities. The proposed and final rules are fully supported by those who commented.

The Board is also adopting minor, nonsubstantive technical corrections to NCUA's requirements for insurance regulation to update and conform it to current agency practice. Previously, regional directors had the delegated authority to designate FCUs as LICUs. Currently, NCUA's Office of Consumer Protection has that delegated authority. This final rule updates and amends §741.204 to remove references to regional directors.<sup>7</sup>

The Board reiterates that 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 may relinquish its LICU status at any time, for any reason, simply by notifying NCUA in writing that it wishes to do so. While the Board believes the LICU designation is advantageous to eligible FCUs, it notes that it is 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.

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

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<sup>7</sup> 12 CFR §741.204.

No, neither the October 2012 proposal nor this final rule creates any new regulatory burdens for FCUs. To the contrary, as mentioned above, the Board is providing regulatory relief to FCUs that qualify for the LICU designation.

### **III. Regulatory Procedures**

#### **A. Regulatory Flexibility Act**

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under ten million dollars in assets). This final rule makes nonsubstantive, technical amendments and extends regulatory relief to FCUs. NCUA has determined and certifies that this final 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.<sup>8</sup> 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 amendments make minor, technical corrections and extend regulatory relief. The final rule does not impose or modify paperwork burdens.

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<sup>8</sup> 44 U.S.C. 3507(d); 5 CFR part 1320.

### 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 final rule will 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 the various levels of government. NCUA has determined that this final 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 final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.<sup>9</sup>

### E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996<sup>10</sup> (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is

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<sup>9</sup> Pub. L. 105-277, 112 Stat. 2681 (1998).

triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act.<sup>11</sup> NCUA does not believe this final rule is a “major rule” within the meaning of the relevant sections of SBREFA. NCUA has submitted the rule to the Office of Management and Budget for its determination in that regard.

## **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 January 10, 2013.

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Mary F. Rupp

Secretary of the Board

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<sup>10</sup> Pub. L. 104–121, 110 Stat. 857 (1996).

<sup>11</sup> 5 U.S.C. 551.

For the reasons stated in the preamble, the National Credit Union Administration amends 12 CFR part 701 as set forth below:

## **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”.