

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 705

RIN 3133-AE58

Community Development Revolving Loan Fund

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) proposes to make several technical amendments to NCUA's rule governing the Community Development Revolving Loan Fund (CDRLF). The proposed amendments would make the rule more succinct and update it to improve its transparency, organization, and ease of use by credit unions.

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: <https://www.ncua.gov/regulation-supervision/Pages/rules/proposed.aspx>. 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 Gerard Poliquin, 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: Geetha Valiyil, Manager, Grants and Loans, Office of Small Credit Union Initiatives, or Justin Anderson, Senior Staff Attorney, Office of General Counsel, at 1775 Duke Street, Alexandria, VA 22314 or telephone (703) 518-6645 (Ms. Valiyil) or (703) 518-6540 (Mr. Anderson).

SUPPLEMENTARY INFORMATION:

A. Background

Congress created the CDRLF in 1979 with an initial appropriation of \$6 million and transferred its exclusive administration to NCUA in 1986. The CDRLF is a source of financial support, in the form of 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 authority to the Office of Small Credit Union Initiatives to determine how to allocate the finite resources of the CDRLF among qualifying credit unions. Awards provided through the CDRLF 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 in those communities, resulting in more opportunities for residents to improve their financial circumstances.

In 2011, the Board substantially revised Part 705 to make the rule clearer and more user friendly, as well as to eliminate outdated and unnecessary provisions.¹ The proposed amendments in this rule are largely technical in nature or help to clarify NCUA's practices with respect to disbursing money from the CDRLF.

B. Section by Section Analysis

§705.1 Authority, Purpose and Scope.

The Board proposes to reorganize this section to make it clearer, including deleting unnecessary provisions. These proposed amendments do not include any substantive changes.

§705.2 Definitions. The Board proposes to remove the definitions of the terms "Board," "Credit Union," and "Fund" from this section as these terms are defined elsewhere in Part 705 or in Part

¹ 76 FR 67583 (Nov. 2, 2011).

700 of NCUA’s regulations.² The Board also proposes to remove the cross-reference to §705.6 in the definition of the term “Notice of Funding Opportunity” as unnecessary.

§705.5. Terms and Conditions. The Board proposes to add the words “for loans” to the title of this section to clarify that it only applies to CDRLF loans, and not technical assistance grants. As discussed in more detail below, the Board also proposes to add a separate “terms and conditions” section for technical assistance grants. This will improve the usability of the rule.

Section 705.5(b) includes a maximum aggregate loan amount of \$300,000 for CDRLF loans. The Board proposes to remove the dollar amount from this section, as it is unnecessary and inaccurate. NCUA may grant loans in any amount it sees fit. The dollar amount of individual CDRLF loans may continue to rise in connection with need and economic conditions. Rather than maintaining an outdated reference to a specific dollar amount in the rule, the Board proposes to amend the rule by providing that any CDRLF loan limits will be published in NCUA’s Notice of Funding Opportunity.³ This approach is more practical than having to update the rule each time the loan funding limit changes. The Board proposes to make a similar amendment with respect to technical assistance grants.

The Board proposes to amend §705.5(h) by adding “security agreements” to the list of terms and conditions that the section provides will be addressed in the related Notice of Funding

² 12 C.F.R. 700.

³ *Notice of Funding Opportunity*, as more fully defined in §705.6 of NCUA’s regulations, means the notice NCUA publishes describing one or more loan or technical assistance grant programs or initiatives being supported by the CDRLF and inviting interested qualifying credit unions to submit applications to participate in the program or initiative.

Opportunity or applicable loan documents. The Board notes that this is not a substantive change, but rather reflects NCUA's current practice of including other terms and conditions related to loans in a Notice of Funding Opportunity or loan documents, including security agreements.

Current §705.10. Technical assistance grants. Current §705.10 contains some provisions detailing the terms and conditions that apply to technical assistance grants. The Board, proposes to simplify and condense this provision and to include most of that information in the Notice of Funding Opportunity. The amended regulatory language will then be redesignated as proposed §705.6. This proposed amendment is not a substantive change. Rather, it is a reorganization that reflects NCUA's preference to provide such pertinent information in a Notice of Funding Opportunity. The Board notes that these amendments preserve NCUA's flexibility to issue grants based on the needs of credit unions.

Current §705.6. Application and award processes. In conformity with the above amendment regarding terms and conditions for technical assistance grants, the Board proposes to redesignate current §705.6 as proposed §705.7. Further, the Board proposes to amend the application and award processes provisions of current §705.6 to more accurately reflect NCUA's actual practices as follows.

The Board proposes to remove any reference to NCUA publishing a Notice of Funding Opportunity on other government websites. NCUA is not legally required to do so and it currently does not do so. NCUA currently publishes a Notice of Funding Opportunity on its website and in the Federal Register. The Board also proposes to provide that NCUA uses press

releases as one method of supplementing information in a Notice of Funding Opportunity. This amendment only clarifies current NCUA practice.

The current rule states that NCUA will only provide a CDRLF loan or technical assistance grant with the concurrence of the applicable regional director.⁴ NCUA's practice, however, is to only require regional director concurrence for loans, not technical assistance grants. Accordingly, the Board proposes to remove from the rule the current requirement for regional director concurrence for technical assistance grants.

With respect to CDRLF loan approval for federally insured, state-chartered credit unions (FISCUs), the Board proposes to make the concurrence process more efficient. Specifically, rather than requiring a FISCU to obtain concurrence from its state supervisory authority (SSA) before NCUA considers the FISCU's loan application, the Board proposes to clarify that, while SSA concurrence is still required, a FISCU is not required to obtain such concurrence before applying for a loan. Under this proposed rule, NCUA would obtain concurrence directly from the SSA rather than through the FISCU. However, the Board encourages a FISCU applying for a loan to notify its SSA of its application. This amendment will make the overall application process less burdensome for FISCUs.

The Board proposes to reorganize and consolidate the disbursement provisions for loans (current §705.6(g)) and technical assistance grants (current §705.10) to better organize the rule. The

⁴ 12 C.F.R. §705.6(c)(4).

Board also proposes to reorganize the appeals provisions and consolidate them into proposed §705.10 (appeals).

§705.9. Reporting and Monitoring. This section requires all participating credit unions to report to their members their progress in providing community support. Credit unions are also required to submit a copy of any such report to NCUA. The Board notes, however, that NCUA's current practice is only to monitor reports relating to CDRLF loans, not technical assistance grants.

While the Board believes all credit unions should be as transparent as possible to members, the Board also wants to eliminate unnecessary burdens on participating credit unions. Therefore, the Board proposes to clarify that NCUA encourages rather than mandates credit union reporting to members with respect to technical assistance grants. This does not change the reporting requirement related to CDRLF loans. The Board notes that a credit union may satisfy the requirements of this section by using any method that results in all members receiving a copy of the written report, including emailing a copy of the report to members that have access to email.

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. 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. 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

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden or increases an existing burden. For purposes of the PRA, a paperwork burden may take the form of a reporting or recordkeeping requirement, both referred to as information collections. The proposed changes in this rule are technical in nature and will not create new paperwork burdens or modify any existing paperwork burdens.

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. This rulemaking will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this 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).

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 June 18, 2016.

Gerard Poliquin
Secretary of the Board

For the reasons stated above, 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. Amend the table of contents of Part 705 to read as follows:

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 for loans

§705.6 Terms and conditions for technical assistance grants

§705.7 Application and awards processes

§705.8 Urgency

§705.9 Reporting and monitoring

§705.10 Appeals

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3. Amend §§ 705.1(c) – (e) to read as follows:

* * * * *

(c) NCUA’s policy is to revolve the loan funds to credit unions as often as practical in order to achieve maximum economic impact on as many credit unions as possible.

(d) The financial awards provided to credit unions through the Fund will better enable them to support the communities in which they operate; provide basic financial services to low-income residents of these communities, and result in more opportunities for the residents of those communities to improve their financial circumstances.

(e) 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.

4. Amend §705.2 to read as follows:

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.

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 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 Qualifying Credit Unions to submit applications to participate in the program(s) or initiatives(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.

5. Amend §705.5 as follows:

a. Amend the title of this section by adding the words “for loans” after the word “conditions”.

b. Amend subsection (b) to read as follows:

(b) Funding Limits. NCUA will publish any applicable loan funding limits in the applicable Notice of Funding Opportunity.

c. Amend subsection (h) by adding the words “security agreements (if any),” between the words “repayment obligations,” and “and covenants,”.

6. Redesignate current §§ 705.6 and 705.7 as §§ 705.7 and 705.8, respectively; add new §705.6 to read as follows:

705.6 Terms and conditions for technical assistance grants.

(a) Participating Credit Unions must comply with the terms and conditions for technical assistance grants specified for each funding opportunity offered under a Notice of Funding Opportunity.

(b) NCUA will establish applicable funding limits for technical assistance grants in the Notice of Funding Opportunity.

7. Amend redesignated §705.7 (current §705.6) as follows:

a. Amend redesignated §705.7(a) to read as follows:

(a) Notice of Funding Opportunity. NCUA will publish a Notice of Funding Opportunity in the Federal Register and on its 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. 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, press releases, direct notices to Qualifying Credit Unions, and announcements on its website.

b. Amend redesignated §705.7(c)(4) to read as follows:

(c) * * *

(4) Examination Information and Applicable Concurrence. In evaluating a Qualifying Credit Union, NCUA will consider all information provided by NCUA staff or state supervisory authority staff that performed the Qualifying Credit Union's most recent examination. In addition:

(i) NCUA will only provide a loan to a qualifying federal credit union with the concurrence of that credit union's supervising Regional Director; and

(ii) NCUA will only provide a loan to a qualifying state-chartered credit union with the written concurrence of the applicable Regional Director and the credit union's state supervisory authority. A qualifying state-chartered credit union should notify its state supervisory authority that it is applying for a loan from the Fund before submitting its application to NCUA. However, a qualifying state-chartered credit union is not required to obtain concurrence before applying for a loan. NCUA will obtain the concurrence directly from the state supervisory authority rather than through the qualifying state-chartered credit union.

Additionally, before NCUA will provide a loan to a qualifying state-chartered credit union the credit union must make copies of its state examination reports available to NCUA and agree to examination by NCUA.

c. Amend redesignated §§705.7(f) and (g) to read as follows:

(f) Notice of Award. 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 in accordance with §705.10 of this part.

(g) Disbursement.

(1) Loans. 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.

(2) Technical Assistance Grants. NCUA will disburse technical assistance grants 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.

8. Remove current §705.8 regarding Qualifying state-chartered credit unions as it has been replaced with current §705.7, which has been designated as proposed §705.8.

9. Revise §705.9(b) to read as follows:

(b) Reporting.

(1) Reporting to NCUA. A Participating Credit Union must complete and submit to NCUA 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. NCUA may request additional information as it determines appropriate.

(2) Reporting to Members.

(i) Loans. A Participating Credit Union that receives a loan under this part 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 provided to members.

(ii) Technical Assistance Grants. A Participating Credit Union that receives a technical assistance grant under this part should 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.

10. Amend §705.10 to read as follows:

§705.10 Appeals.

(a) Appeals of Non-Qualification. A Qualifying Credit Union whose application for a loan or technical assistance grant has been denied, under §705.7(f) of this part, 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

§705.8 of this part. Any such rejection shall not be subject to appeal or review by the NCUA Board.

(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.