§ 701.14 Change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition.

(a) Statement of scope and purpose. Section 212 of the Federal Credit Union Act (12 U.S.C. 1790a) sets forth conditions under which a credit union must notify NCUA in writing of any proposed changes in its board of directors, committee members or senior executive staff. The regulation only applies in cases of newly chartered credit unions and credit unions in troubled condition.

(b) Definitions. For the purposes of this section:

(1) Committee member means any individual who serves as an official of the credit union in the capacity of a credit committee member or supervisory committee member.

(2) Senior executive officer means a credit union’s chief executive officer (typically this individual holds the title of president or treasurer/manager), any assistant chief executive officer (e.g., any assistant president, any vice president or any assistant treasurer/manager) and the chief financial officer (controller). The term “senior executive officer” also includes employees of an entity, such as a consulting firm, hired to perform the functions of positions covered by the regulation.

(3) Except as provided in paragraph (b)(4) of this section for corporate credit unions, “troubled condition” means any insured credit union that has one or a combination of the following conditions:

   (i) Has been assigned

      (A) A 4 or 5 Camel composite rating by NCUA based on core workpapers received from the state supervisor in the case of a federally insured, state-chartered credit union in a state that does not use the Camel system. In this case, the state supervisor will be notified in writing by the Regional Director in the Region in which the credit union is located that the credit union has been designated by NCUA as a troubled institution;

      (ii) Has been granted assistance as outlined under sections 208 or 216 of the Federal Credit Union Act.

(4) In the case of a corporate credit union, “troubled condition” means any insured corporate credit union that has one or a combination of the following conditions:

   (i) Has been assigned

      (A) A 4 or 5 Corporate Risk Information System (CRIS) rating by NCUA in either the Financial Risk or Risk Management composites, in the case of a federal corporate credit union, or

      (B) An equivalent 4 or 5 CRIS rating in either the Financial Risk or Risk Management composites by the state supervisor in the case of a federally insured, state-chartered corporate credit union that has adopted the CRIS system, or an equivalent 4 or 5 CAMEL composite rating by the state supervisor in the case of a federally insured, state-chartered corporate credit union in a state that does not use the CAMEL system, or

      (C) A 4 or 5 CRIS rating in either the Financial Risk or Risk Management composites by NCUA based on core workpapers received from the state supervisor in the case of a federal corporate credit union, or

      (B) An equivalent 4 or 5 CRIS rating in either the Financial Risk or Risk Management composites by the state supervisor in the case of a federally insured, state-chartered corporate credit union in a state that does not use either the CRIS or CAMEL system. In this case, the state supervisor will be notified in writing by the Director of the Office of Corporate Credit Unions that the corporate credit union has been designated by NCUA as a troubled institution;

   (ii) Has been granted assistance as outlined under sections 208 or 216 of the Federal Credit Union Act.

(c) Procedures for Notice of Proposed Change in Official or Senior Executive Officer—(1) Prior Notice Requirement. An insured credit union must give NCUA

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written notice at least 30 days before
the effective date of any addition or re-
placement of a member of the board of
directors or committee member or the
employment or change in responsibil-
ities of any individual to a position of
senior executive officer if:
(i) The credit union has been char-
tered for less than two years; or
(ii) The credit union meets the defi-
nition of troubled condition in para-
graph (b)(3) or (4) of this section.

(2) Waiver of Prior Notice—(i) Waiver
requests. Parties may petition the ap-
propriate Regional Director for a waiv-
er of the prior notice required under
this section. Waiver may be granted if
it is found that delay could harm the
credit union or the public interest.

(ii) Automatic waiver. In the case of
the election of a new member of the
board of directors or credit committee
member at a meeting of the members
of a federally insured credit union, the
prior 30-day notice is automatically
waived and the individual may imme-
diately begin serving, provided that a
complete notice is filed with the appro-
priate Regional Director within 48
hours of the election. If NCUA dis-
approves a director or credit com-
mittee member, the board of directors
of the credit union may appoint its
own alternate, to serve until the next
annual meeting, contingent on NCUA
approval.

(iii) Effect on disapproval authority. A
waiver does not affect the authority of
NCUA to issue a Notice of Disapproval
within 30 days of the waiver or within
30 days of any subsequent required no-
tice.

(3) Filing procedures—(i) Where to file.
Notices will be filed with the appro-
priate Regional Director or, in the case
of a corporate credit union, with the
Director of the Office of Corporate
Credit Unions. All references to Re-
gional Director will, for corporate
credit unions, mean the Director of Of-
fice of Corporate Credit Unions. State-
chartered federally insured credit
unions will also file a copy of the no-
tice with their state supervisor.

(ii) Contents. The notice must contain
information about the competence, ex-
perience, character, or integrity of the
individual on whose behalf the notice is
submitted. The Regional Director or
his or her designee may require addi-
tional information. The information
submitted must include the identity,
personal history, business background,
and experience of the individual, in-
cluding material business activities
and affiliations during the past five
years, and a description of any mate-
rial pending legal or administrative
proceedings in which the individual is a
party and any criminal indictment or
conviction of the individual by a state
or federal court. Each individual on
whose behalf the notice is filed must
attest to the validity of the informa-
tion filled. At the option of the indi-
vidual, the information may be for-
warded to the Regional Director by the
individual; however, in such cases, the
credit union must file a notice to that
effect.

(iii) Processing. Within ten calendar
days after receiving the notice, the Re-
gional Director will inform the credit
union either that the notice is com-
plete or that additional, specified in-
formation is needed and must be sub-
mitted within 30 calendar days. If the
initial notice is complete, the Regional
Director will issue a written decision of
approval or disapproval to the indi-
vidual and the credit union within 30
calendar days of receipt of the notice.
If the initial notice is not complete,
the Regional Director will issue a writ-
ten decision within 30 calendar days of
receipt of the original notice plus the
amount of time the credit union takes
to provide the requested additional in-
formation. If the additional informa-
tion is not submitted within 30 cal-
endar days of the Regional Director’s
request, the Regional Director may ei-
ther disapprove the proposed individual
or review the notice based on the infor-
mation provided. If the credit union
and the individual have submitted all
requested information and the Re-
gional Director has not issued a writ-
ten decision within the applicable time
period, the individual is approved.

(d) Commencement of Service. A pro-
posed director, committee member, or
senior executive officer may begin
service after the end of the 30-day pe-
riod or any other additional period as
provided under paragraph (c)(3)(iii) of
this section, unless the NCUA disapproves the notice before the end of
the period.

(e) Notice of disapproval. NCUA may
disapprove the individual’s serving as a
director, committee member or senior
executive officer if it finds that the
competence, experience, character, or
integrity of the individual with respect
to whom a notice under this section is
submitted indicates that it would not
be in the best interests of the members
of the credit union or of the public to
permit the individual to be employed
by, or associated with, the credit
union. The Notice of Disapproval will
advise the parties of their rights of ap-
peal pursuant to 12 CFR part 747 sub-
part J, of NCUA’s Regulations.

§ 701.19 Benefits for employees of Fed-
eral credit unions.

(a) General authority. A federal credit
union may provide employee benefits,
including retirement benefits, to its
employees and officers who are com-
pensated in conformance with the Act
and the bylaws, individually or collect-
vively with other credit unions. The
kind and amount of these benefits
must be reasonable given the federal
credit union’s size, financial condition,
and the duties of the employees.

(b) Plan trustees and custodians. Where
a federal credit union is the benefit
plan trustee or custodian, the plan
must be authorized and maintained in
accordance with the provisions of part 724
of this chapter. Where the benefit
plan trustee or custodian is a party
other than a federal credit union, the
benefit plan must be maintained in ac-
cordance with applicable laws gov-
erning employee benefit plans, includ-
ing any applicable rules and regula-
tions issued by the Secretary of Labor,
the Secretary of the Treasury, or any
other federal or state authority exer-
cising jurisdiction over the plan.

(c) Investment authority. A federal
credit union investing to fund an em-
ployee benefit plan obligation is not
subject to the investment limitations
of the Act and part 703 or, as applica-
table, part 704, of this chapter and may
purchase an investment that would
otherwise be impermissible if the in-
vestment is directly related to the fed-
eral credit union’s obligation or poten-
tial obligation under the employee ben-
efit plan and the federal credit union
holds the investment only for as long
as it has an actual or potential obliga-
tion under the employee benefit plan.

(d) Defined benefit plans. Under para-
graph (c) of this section, a federal cred-
(it union may invest to fund a defined
benefit plan if the investment meets
the conditions provided in that para-
graph. If a federal credit union invests
to fund a defined benefit plan that is
not subject to the fiduciary responsi-
bility provisions of part 4 of the Em-
ployee Retirement Income Security
Act of 1974, it should diversify its in-
vestment portfolio to minimize the
risk of large losses unless it is clearly
prudent not to do so under the cir-
cumstances.

(e) Liability insurance. No federal
credit union may occupy the position
of a fiduciary, as defined in the Em-
ployee Retirement Income Security
Act of 1974 and the rules and regula-
tions issued by the Secretary of Labor,
unless it has obtained appropriate li-
ability insurance as described and per-
mitted by Section 410(b) of the Em-
ployee Retirement Income Security

(f) Definitions. For this section, de-
defined benefit plan has the same mean-
ing as in 29 U.S.C. 1002(35) and em-
ployee benefit plan has the same mean-
ing as in 29 U.S.C. 1002(3).

§ 701.20 Suretyship and guaranty.

(a) Scope. This section authorizes a
federal credit union to enter into a
suretyship or guaranty agreement as
an incidental powers activity. This sec-
tion does not apply to the guaranty of
public deposits or the assumption of li-
ability for member accounts.

(b) Definitions. A suretyship binds a
federal credit union with its principal
to pay or perform an obligation to a
third person. Under a guaranty agree-
ment, a federal credit union agrees to
satisfy the obligation of the principal