

National Credit Union Administration

§ 701.33

to part 705 is repaid, nonmember share deposits accepted to meet the matching requirement are subject to this section.

[54 FR 31184, July 27, 1989, as amended at 54 FR 51384, Dec. 15, 1989; 55 FR 1794, Jan. 19, 1990; 58 FR 21645, Apr. 23, 1993; 59 FR 26102, May 19, 1994; 61 FR 3790, Feb. 2, 1996]

§ 701.33 Reimbursement, insurance, and indemnification of officials and employees.

(a) *Official*. An *official* is a person who is or was a member of the board of directors, credit committee or supervisory committee, or other volunteer committee established by the board of directors.

(b) *Compensation*. (1) Only one board officer, if any, may be compensated as an officer of the board. The bylaws must specify the officer to be compensated, if any, as well as the specific duties of each of the board officers. No other official may receive compensation for performing the duties or responsibilities of the board or committee position to which the person has been elected or appointed.

(2) For purposes of this section, the term *compensation* specifically excludes:

(i) Payment (by reimbursement to an official or direct credit union payment to a third party) for reasonable and proper costs incurred by an official in carrying out the responsibilities of the position to which that person has been elected or appointed, if the payment is determined by the board of directors to be necessary or appropriate in order to carry out the official business of the credit union, and is in accordance with written policies and procedures, including documentation requirements, established by the board of directors. Such payments may include the payment of travel costs for officials and one guest per official;

(ii) Provision of reasonable health, accident and related types of personal insurance protection, supplied for officials at the expense of the credit union: *Provided*, that such insurance protection must exclude life insurance; must be limited to areas of risk, including accidental death and dismemberment, to which the official is exposed by reason of carrying out the duties or re-

sponsibilities of the official's credit union position; must cease immediately upon the insured person's leaving office, without providing residual benefits other than from pending claims, if any; except that a credit union must comply with federal and state laws providing departing officials the right to maintain health insurance coverage at their own expense and

(iii) Indemnification and related insurance consistent with paragraph (c) of this section.

(c) *Indemnification*. (1) A Federal credit union may indemnify its officials and current and former employees for expenses reasonably incurred in connection with judicial or administrative proceedings to which they are or may become parties by reason of the performance of their official duties.

(2) Indemnification shall be consistent either with the standards applicable to credit unions generally in the state in which the principal or home office of the credit union is located, or with the relevant provisions of the Model Business Corporation Act. A Federal credit union that elects to provide indemnification shall specify whether it will follow the relevant state law or the Model Business Corporation Act. Indemnification and the method of indemnification may be provided for by charter or bylaw amendment, contract or board resolution, consistent with the procedural requirements of the applicable state law or the Model Business Corporation Act, as specified. A charter or bylaw amendment must be approved by the National Credit Union Administration.

(3) A Federal credit union may purchase and maintain insurance on behalf of its officials and employees against any liability asserted against them and expenses incurred by them in their official capacities and arising out of the performance of their official duties to the extent such insurance is permitted by the applicable state law or the Model Business Corporation Act.

(4) Notwithstanding paragraphs (c)(1) through (3) of this section, a federal credit union may not indemnify a dual employee for duties performed for any employer other than the federal credit union. For purposes of this subsection, a dual employee is a federal credit

§ 701.34

12 CFR Ch. VII (1–1–10 Edition)

union employee who also performs work functions for another entity as part of a sharing arrangement between the federal credit union and the other entity.

[53 FR 29642, Aug. 8, 1988, as amended at 57 FR 54503, Nov. 19, 1992; 66 FR 65629, Dec. 20, 2001; 72 FR 30246, May 31, 2007]

§ 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, a regional director 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 will notify the regional director in writing within 30 days of receipt of the regional director's notification.

(2) Low-income members are those members who earn 80% or less than the median family income for the metropolitan area where they live or national metropolitan area, whichever is greater. A regional director may use total median earnings for individuals instead of median family income if it is more beneficial to a federal credit union when determining if the credit union qualifies for a low-income credit union designation. A regional director will use the statewide or national, non-metropolitan area median family income instead of the metropolitan area or national metropolitan area median family income for members living outside a metropolitan area. Member earnings will be estimated based on data reported by the U.S. Census Bureau for the geographic area where the member lives. The term "low-income members" also includes those members enrolled as students in a college, university, high school, or vocational school.

(3) Federal credit unions that do not receive notification that they qualify for a low-income credit union designation but believe they qualify may submit information to the regional director to demonstrate they qualify for a low-income credit union designation. For example, federal credit unions may provide actual member income from

loan applications or surveys to demonstrate a majority of their membership is low-income members.

(4) If the regional director determines a low-income designated federal credit union no longer meets the criteria for the designation, the regional director will notify the federal credit union in writing, and the federal credit union must, within five years, meet the criteria for the designation or come into compliance with the regulatory requirements applicable to federal credit unions that do not have a low-income designation. The designation will remain in effect during the five-year period. If a federal credit union does not requalify and has secondary capital or nonmember deposit accounts with a maturity beyond the five-year period, a regional director may extend the time for a federal credit union to come into compliance with regulatory requirements to allow the federal credit union to satisfy the terms of any account agreements. A federal credit union may appeal a regional director's determination that the credit union no longer meets the criteria for a low-income designation to the Board within 60 days of the date of the notice from the regional director. An appeal must be submitted through the regional director.

(5) Any credit union with a low-income credit union designation on January 1, 2009 will have five years from that date to meet the criteria for low-income designation under paragraph (a)(1) of this section, unless the regional director determines a longer time is required to allow the low-income credit union to satisfy the terms of a secondary capital or nonmember deposit account agreement.

(6) *Definitions.* The following definitions apply to this section:

Median family income and *total median earnings for individuals* are income statistics reported by the U.S. Census Bureau. The applicable income data can be obtained via the American FactFinder on the Census Bureau's webpage at http://factfinder.census.gov/home/saff/main.html?_lang=en.

Metropolitan area means an area designated by the Office of Management and Budget pursuant to 31 U.S.C. 1104(d), 44 U.S.C. 3504(c), and Executive