

**PART 709—INVOLUNTARY LIQUIDATION OF FEDERAL CREDIT UNIONS AND ADJUDICATION OF CREDITOR CLAIMS INVOLVING FEDERALLY INSURED CREDIT UNIONS IN LIQUIDATION**

Sec.

- 709.0 Scope.
- 709.1 Definitions.
- 709.2 NCUA Board as liquidating agent.
- 709.3 Challenge to revocation of charter and involuntary liquidation.
- 709.4 Powers and duties of liquidating agent.
- 709.5 Payout priorities in involuntary liquidation.
- 709.6 Initial determination of creditor claims by the liquidating agent.
- 709.7 Procedures for appeal of initial determination.
- 709.8 Administrative appeal of the initial determination.
- 709.9 Expedited determination of creditor claims.
- 709.10 Treatment by conservator or liquidating agent of financial assets transferred in connection with a securitization or participation.
- 709.11 Treatment by conservator or liquidating agent of collateralized public funds.
- 709.12 Prepayment fees to Federal Home Loan Bank.
- 709.13 Treatment of swap agreements in liquidation or conservatorship.

AUTHORITY: 12 U.S.C. 1757, 1766, 1767, 1786(h), 1787, 1788, 1789, 1789a.

SOURCE: 56 FR 56925, Nov. 7, 1991, unless otherwise noted.

**§ 709.0 Scope.**

The rules and procedures in this part apply to charter revocations of federal credit unions under 12 U.S.C. 1787(a)(1)(A), (B), the involuntary liquidation and adjudication of creditor claims in all cases involving federally-insured credit unions, the treatment by the Board as conservator or liquidating agent of financial assets transferred in connection with a securitization or participation or of public funds held by a federally-insured credit union, and the allowance of prepayment fees to Federal Home Loan Banks under specified conditions. Remaining sections of this part are applicable to all federally insured credit unions. This part does not apply to share insurance claims arising out of the liquidation of a fed-

erally insured credit union. Insurance claims are decided pursuant to part 745 of this chapter.

[56 FR 56925, Nov. 7, 1991, as amended at 65 FR 55442, Sept. 14, 2000; 66 FR 11230, Feb. 23, 2001; 66 FR 40575, Aug. 3, 2001]

**§ 709.1 Definitions.**

For the purposes of this part, the following definitions apply:

(a) *General Counsel* means the General Counsel of the National Credit Union Administration or any attorney assigned to the General Counsel's staff.

(b) *Liquidating Agent* means the NCUA Board or person(s) appointed by it with delegated authority to carry out the liquidation of the credit union.

(c) *Insolvent* means insolvent as that term is defined in §700.1(e)(1) of this chapter.

(d) *Claim* means a creditor's claim against the credit union in liquidation. This term does not include insurance claims arising out of the liquidation of a federally insured credit union. Insurance claims are decided pursuant to part 745 of this chapter.

(e) *Shareholder* means members, non-members, accountholders or any other party or entity that is the owner of a share, share certificate or share draft account or the equivalent of such accounts under state law.

[56 FR 56925, Nov. 7, 1991, as amended at 69 FR 27828, May 17, 2004]

**§ 709.2 NCUA Board as liquidating agent.**

(a) The Board, as liquidating agent, by operation of law and without any conveyance or other instrument, act or deed, shall succeed to all the rights, titles, powers, and privileges of the credit union, and of its shareholders, officers, and directors, with respect to the credit union and its assets, and such shareholders, officers, or directors, shall not thereafter have or exercise any such rights, powers, or privileges or act in connection with any assets or property of any nature of the credit union.

(b) The Board, as liquidating agent, shall take possession of and title to books, records, and assets of every description of such credit union to which

## National Credit Union Administration

## § 709.4

such credit union has rights of possession and title to all offices and other facilities of such credit union.

### § 709.3 Challenge to revocation of charter and involuntary liquidation.

If a Federal credit union is determined to be insolvent and placed into liquidation pursuant to 12 U.S.C. 1787, the Federal credit union may, not later than 10 days after the date on which the Board closes the credit union for liquidation, apply to the United States District Court for the Judicial district in which the principal office of the credit union is located or the United States District Court for the District of Columbia for an order requiring the Board to show cause why it should not be prohibited from continuing such liquidation. Notwithstanding other provisions of this part, the board of directors of the credit union may meet following the placing of the institution into liquidation for the sole purpose of considering and authorizing the filing of this action in the name of the credit union. No such action in the name of the credit union may be instituted without the authorization of the board of directors of the institution pursuant to a valid board of directors resolution. No credit union funds shall be available to pay expenses incurred in bringing a legal action to challenge the Board's liquidation action.

### § 709.4 Powers and duties of liquidating agent.

(a) *Inventory of assets.* As soon as practicable after taking possession, the liquidating agent shall inventory the assets of such credit union as of the date of taking possession, showing the value as carried on the books of the credit union, and the security therefor, if any, a brief description of the assets and any security, and a record of the credit union's creditor and accounts liabilities.

(b) *Notice to creditors.* The liquidating agent shall promptly publish a notice to the credit union's creditors to present their claims, together with proof, to the liquidating agent by a date specified in the notice. This date shall be not less than 90 days after the publication of the notice. The liqui-

dating agent shall republish such notice approximately one and two months, respectively, after the initial publication. At the time of initial publication, the liquidating agent shall mail a notice similar to the published notice to any creditor shown on the credit union's books at the last address appearing therein. If the liquidating agent discovers the name of a creditor whose name does not appear on the credit union's books, a notice similar to the published notice shall be mailed to such creditor within 30 days after the discovery of the name and address.

(c) *General.* The liquidating agent shall collect all obligations and money due such credit union and may, to the extent consistent with its appointment, do all things desirable or expedient in its discretion to wind up the affairs of the credit union including, but not limited to, the following:

(1) Exercise all rights and powers of the credit union including, but not limited to, any rights and powers under any mortgage, deed of trust, chose in action, option, collateral note, contract, judgment or decree, or instrument of any nature;

(2) Institute, prosecute, maintain, defend, intervene, and otherwise participate in any and all actions, suits, or other legal proceedings by and against the liquidating agent or the credit union or in which the liquidating agent, the credit union, or its creditors or shareholders, or any of them, shall have an interest, and in every way to represent the credit union, its shareholders and creditors, subject to the direction of General Counsel;

(3) Employ on a salary or fee basis such persons as in the judgment of the liquidating agent are necessary or desirable to carry out its responsibilities and functions, including, but not limited to, appraisers and Certified Public Accountants, and pay the costs out of the assets of the liquidated credit union;

(4) Employ or retain any attorney or attorneys designated by, or acceptable to, the General Counsel in connection with litigation or for legal advice and assistance, for the liquidation generally or in particular instances, and pay compensation and retainers of such attorney or attorneys, together with