

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700, 701, 712, 715, 723, 725, and 790

### Definitions; Organization and Operation of Federal Credit Unions; Credit Union Service Corporations; Supervisory Committee Audits and Verifications; Member Business Loans; Central Liquidity Facility; Description of NCUA

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed rule.

**SUMMARY:** The NCUA Board is proposing amendments to various rules to make technical corrections and add and revise certain definitions. The Board is proposing a rule to add a scope section and definitions of “paid-in and unimpaired capital and surplus” and “unimpaired capital and surplus” to its rule containing definitions. The Board also proposes to remove obsolete references from this rule and to update its rule concerning changes in officials of newly chartered or troubled credit unions. The Board proposes to correct a citation in the supervisory committee rule and make clarifications to the credit union service organization (CUSO) rule and the member business loan rule. In addition, the Board proposes to update and clarify the definition for “paid-in and unimpaired capital and surplus” in the Central Liquidity Facility (CLF) rule. Finally, the Board proposes to change a reference in Part 790 from the “Office of Community Development Credit Unions” to the “Office of Credit Union Development.”

**DATES:** Comments must be received on or before August 20, 2001.

**ADDRESSES:** Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. You may fax comments to (703) 518-6319 or email comments to

*regcomments@ncua.gov. Please send comments by one method only.*

**FOR FURTHER INFORMATION CONTACT:** Regina Metz, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518-6561, or Herbert S. Yolles, Deputy Director, Office of Examination and Insurance, at the above address or telephone: (703) 518-6360.

#### SUPPLEMENTARY INFORMATION:

##### Background

NCUA has a policy of continually reviewing its regulations to “update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.” Interpretive Rulings and Policy Statement (IRPS) 87-2, Developing and Reviewing Government Regulations. NCUA staff’s most recent review of NCUA’s regulations revealed that two parts contain references related to section 116 of the Federal Credit Union Act (FCU Act). 12 CFR 700.1, 701.14. These references are obsolete because Congress, when it enacted the Credit Union Membership Access Act (CUMAA), repealed section 116 and replaced it with prompt corrective action, section 216. P.L. 105-219; 12 U.S.C. 1790d.

In the definitions part of the regulations, the proposed rule adds a scope section and definitions for “paid-in and unimpaired capital and surplus” and “unimpaired capital and surplus.” 12 CFR part 700. The proposed rule conforms definitions of paid-in and unimpaired capital and surplus in the CUSO and CLF rules to the proposed definitions in the definitions part. 12 CFR 712.2(d); 12 CFR 725.2(o). The proposed rule also corrects a citation in the supervisory committee audit rule and clarifies the member business loan rule by changing a reference from “federally insured credit unions” to “federally insured state-chartered credit unions.” 12 CFR 715.2(l), 723.4. The proposed rule also updates NCUA’s regulations by changing a reference in Part 790 from the “Office of Community Development Credit Unions” to the office’s new name, the “Office of Credit Union Development.”

##### General Changes to Definitions Part

Part 700 provides definitions for some terms used throughout NCUA’s regulations. NCUA’s regulations include

several parts with their own definition provisions, such as the supervisory committee audit rule. 12 CFR part 715. The proposed rule adds a scope section to part 700 to alert readers to the fact that many other definitions appear in the particular parts where the terms are used.

Part 700 currently contains the definitions for “remaining maturity” and “gross income.” 12 CFR 700.1(h); 700.1(j). These definitions became obsolete when Congress repealed section 116 of the FCU Act, containing statutory reserve requirements for federal credit unions. 12 U.S.C. 1762 (repealed Aug. 7, 1998). The proposed rule retains the remaining existing definitions and alphabetizes them for ease of reference.

##### “Paid-In and Unimpaired Capital and Surplus” and “Unimpaired Capital and Surplus”

The phrases “paid-in and unimpaired capital and surplus” and “unimpaired capital and surplus” appear multiple times in the FCU Act and NCUA’s regulations, often in the context of establishing a limit on a federal credit union’s financial commitment in an activity. For example, a federal credit union’s maximum investment in loans to other credit unions, loans or investments in CUSOs, and the maximum amount it may borrow are based on a percentage of its paid-in and unimpaired capital and surplus. 12 U.S.C. 1757(7)(C), 1757(9), 1757(5)(D), 1757(7)(I); 12 CFR 741.2. By comparison, a federal credit union’s investment in state and municipal securities, purchase of eligible obligations, and interest in a loan participation or total indebtedness to one person is limited to a percentage of its unimpaired capital and surplus. 12 U.S.C. 1757(7)(K), 1757(13); 12 CFR 701.23(b)(3), 701.22(b)(1), 701.23(f).

The Federal Credit Union Bylaws (FCU Bylaws) set out a long-standing definition for “paid in and unimpaired capital” and, also, a definition for “surplus.” FCU Bylaws, art. XVIII. § 1.(g), (h). The FCU Bylaws define “paid in and unimpaired capital,” as of a given date, as “the balance of the paid-in share accounts as of such date, less any losses that may have been incurred for which there is no reserve or which have not been charged against undivided earnings.” FCU

Bylaws art. XVIII. § 1(g). The FCU Bylaws also state that “surplus, as of a given date means the credit balance of the undivided earning account on such date, after all losses have been provided for and net earnings or net losses have been added thereto or deducted therefrom, as the case may be” and that “[r]eserves are not considered as a part of the surplus.” FCU Bylaws art. XVIII. § 1(h).

A definition for “paid-in and unimpaired capital and surplus” in relation to the CLF appears in the FCU Act and in the CLF regulation. 12 U.S.C. 1795a(3); 12 CFR 725.2(o). That definition includes “deposits” in the calculation because the definition applies to state-chartered credit unions as well as federal credit unions, and some state-chartered credit unions are authorized to hold deposits. There is currently no definition solely for “unimpaired capital and surplus” in the FCU Act, FCU Bylaws, or NCUA regulations.

NCUA’s long-standing interpretation of both “paid-in and unimpaired capital and surplus” and “unimpaired capital and surplus” is that both terms generally consist of the paid-in balance of shares plus undivided earnings. The distinction between “paid-in and unimpaired capital” and “unimpaired capital,” in the context of credit unions, is essentially historical and has no current effect on the relevant calculations under NCUA regulations. Under the FCU Act and the FCU Bylaws, federal credit unions may permit members to subscribe to member shares in installments. 12 U.S.C. 1759(a); FCU Bylaws, art. II, art. III. Article III of the FCU Bylaws, currently titled “Shares of Members,” was titled “Capital and Liability,” from the 1930s through 1950s. In the early years of credit union development, new members would often subscribe to a five-dollar share and pay in 25-cent monthly installments. The term “paid-in and unimpaired capital” was used to clarify that shares that had been subscribed to but not yet paid (i.e., future installments) were not included as member capital. Because installment payments of shares are in little, if any, use today, the distinction has little relevance. In any event, only amounts actually paid into share accounts are included under either term. The proposed rule defines “unimpaired capital and surplus” as meaning the same as “paid-in and unimpaired capital and surplus” and cross-references its definition.

The Board believes it would improve the clarity of NCUA’s regulations to include definitions for “paid-in and

unimpaired capital and surplus” and “unimpaired capital and surplus” in the general definitions part of the regulations. The proposed definition for “paid-in and unimpaired capital and surplus” is a refined statement of the definitions currently in the FCU Bylaws, but does not change the meaning of those definitions or the agency’s long-standing interpretation. Placement of the definitions in the regulations will provide easier and more logical access to users of the regulations than having the definitions solely in the FCU Bylaws. In addition, the Board believes the proposed rule simplifies the definitions by using appropriate accounting terminology familiar to persons who are referring to the regulations. Proposed 12 CFR 700.1(f), (j).

The proposed definition for paid-in and unimpaired capital and surplus is shares plus post-closing, undivided earnings. The term “post-closing” is simpler terminology that a credit union person, an examiner, and an accounting professional would understand to encompass the closing of the books and posting of all relevant and required period losses to undivided earnings. Post-closing undivided earnings incorporates and means the same as the language in the Bylaw provisions that define surplus (“after all losses have been provided for and net earnings or net losses have been added thereto or deducted therefrom”) and define unimpaired capital (“less any losses that may have been incurred for which there is no reserve or which have not been charged against undivided earnings”).

The proposed definition further clarifies the meaning of paid-in and unimpaired capital and surplus by including the statement that: “This does not include regular reserves or special reserves required by law, regulation or special agreement between the credit union and its regulator or share insurer.” This may seem redundant since the term “undivided earnings” already excludes those regular and special reserves. However, the Board believes that this statement will lessen possible confusion by distinguishing between “retained earnings,” in the prompt corrective action rule, which include regular and special reserves, and “undivided earnings” which do not include them. The term “retained earnings” is used in the prompt corrective action rule in the definition of the term “net worth.” 12 CFR 702.2(f). The prompt corrective action rule requires federally insured credit unions to maintain regular and special reserves in 12 CFR 702.401.

#### **Amendment to Definition of “Paid-In and Unimpaired Capital and Surplus” in the CUSO Rule**

NCUA’s CUSO regulation currently states that “paid-in and unimpaired capital and surplus means shares and undivided earnings.” 12 CFR 712.2(d). As noted previously, the term is relevant because a federal credit union’s lending or investment in CUSOs is limited as a percentage of its paid-in and unimpaired capital and surplus. 12 U.S.C. 1757(5)(D); 12 CFR 712.2(b); 12 U.S.C. 1757(7)(I); 12 CFR 712.2(a).

The Board believes it is helpful to keep a definition for paid-in and unimpaired capital and surplus in the CUSO rule for easy reference. The proposed definition in § 712.2(d) conforms the CUSO provision so that it mirrors the new proposed definition in the general definition part. The proposed rule revises the current rule into two subsections for further clarity, stating the requirement for GAAP accounting for investments and loans as a separate subsection.

#### **Amendment to Definition of “Paid-In and Unimpaired Capital and Surplus” in the CLF Rule**

The CLF is a mixed-ownership government corporation created to improve the general financial stability of credit unions by meeting their liquidity needs. 12 CFR 725.1. Both state and federally chartered credit union may become members. 12 CFR 725.3.

The Board proposes to revise the current definition in the CLF rule for paid-in and unimpaired capital and surplus. The current CLF rule combines the Bylaw definition for paid-in and unimpaired capital with the Bylaw definition of surplus and is substantively identical to those provisions. 12 CFR 725.2(o). The proposed rule essentially would conform this definition to the definition provided in the general definitions part with the exception that deposits are included. As noted previously, deposits are included because some state-chartered credit unions are authorized to accept deposits. The proposed rule states that paid-in and unimpaired capital and surplus means shares and deposits plus post-closing, undivided earnings. The definition further states that the term does not include regular reserves or special reserves required by law, regulation or special agreement between the credit union and its regulator or share insurer.

#### **Technical Amendments to § 701.14**

Section 701.14 requires a credit union that is newly chartered or in troubled

condition to report any changes in its board of directors, committee members, or senior executive officers to NCUA. NCUA first issued this regulation in 1990 and updated it in 1999. 55 FR 43084, Oct. 26, 1990; 64 FR 28715, May 27, 1999. The proposed rule deletes the two obsolete references in § 701.14 to section 116 of the FCU Act and replaces them with references to section 216 of the FCU Act, prompt corrective action.

#### Technical Amendments to § 715.2

Part 715 contains the rules for federally insured credit unions for supervisory committees' audits and verifications. Section 715.2(l) refers to the definition of supervisory committee in section 111(b) of the FCU Act. The citation for that provision was incorrect and should be 12 U.S.C. 1761(b).

#### Technical Amendments to § 723.4

Part 723 contains the rules for federally insured credit unions' member business loans. If a federal credit union has granted a member business loan, paragraphs (a) through (g) of NCUA's general lending rule, § 701.21, also apply to the loan to the extent that the paragraphs are not inconsistent with the member business loans rule. 12 CFR 723.4. If a federally insured state-chartered credit union has granted a member business loan, paragraphs (a) through (g) of § 701.21 do not apply unless the credit union is required to comply with them under part 741. The Board proposes to clarify § 723.4 by changing the reference in the section from "federally insured credit unions" to "federally insured state-chartered credit unions."

#### Technical Amendments to § 790.2(b)(13)

The proposed rule updates NCUA's regulations by changing a reference in part 790 from the "Office of Community Development Credit Unions" to the office's new name, the "Office of Credit Union Development."

#### Regulatory Procedures

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small entities (primarily those under one million dollars in assets). The proposed rule will not have a significant economic impact on a substantial number of small credit unions, and therefore, a regulatory flexibility analysis is not required.

##### *Paperwork Reduction Act*

NCUA has determined that the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

##### *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 proposed rule would not have substantial direct effects 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 proposed rule 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).

##### *Agency Regulatory Goal*

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive.

#### List of Subjects

##### *12 CFR Part 700*

Credit unions, Definitions.

##### *12 CFR Part 701*

Credit unions.

##### *12 CFR Part 712*

Credit unions, Credit union service organizations.

##### *12 CFR Part 715*

Audits, Credit unions, Supervisory committees.

##### *12 CFR Part 723*

Credit, Credit unions.

##### *12 CFR Part 725*

Credit unions, Liquidity.

##### *12 CFR Part 790*

Credit unions.

By the National Credit Union Administration Board on June 14, 2001.

**Becky Baker,**

*Secretary of the Board.*

Accordingly, the NCUA proposes to amend 12 CFR parts 700, 701, 715, 723, 725, and 790 as follows:

#### PART 700—DEFINITIONS

1. The authority citation for part 700 continues to read as follows:

**Authority:** 12 U.S.C. 1752, 1757(6), 1766.

2. Redesignate current § 700.1 as § 700.2 and add a new § 700.1 to read as follows:

##### **§ 700.1 Scope.**

The definitions in § 700.2 apply to terms used in this chapter. Many additional definitions appear in the parts where the terms are used.

3. In newly designated § 700.2:

- A. Remove paragraphs (h) and (j);
- B. Redesignate paragraphs (e), (f), (g) and (i) as paragraphs (g), (h), (i) and (e) respectively; and
- C. Add new paragraphs (f) and (j).

##### **§ 700.2 Definitions.**

\* \* \* \* \*

(f) *Paid-in and unimpaired capital and surplus* means shares plus post-closing, undivided earnings. This does not include regular reserves or special reserves required by law, regulation or special agreement between the credit union and its regulator or share insurer. "Paid-in and unimpaired capital and surplus" for purposes of the Central Liquidity Facility is defined in § 725.2(o) of this chapter.

\* \* \* \* \*

(j) *Unimpaired capital and surplus* means the same as "paid-in and unimpaired capital and surplus," as defined in paragraph (f) of this section.

\* \* \* \* \*

#### PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

4. The authority citation for part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

5. In § 701.14, revise paragraphs (b)(3)(ii) and (b)(4)(ii) to read as follows:

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

\* \* \* \* \*

- (b) \* \* \*
- (3) \* \* \*

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

(4) \* \* \*

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

\* \* \* \* \*

**PART 712—CREDIT UNION SERVICE ORGANIZATIONS (CUSOs)**

6. The authority citation for part 712 continues to read as follows:

**Authority:** 12 U.S.C. 1756, 1757(5)(d) and (7)(I), 1766, 1782, 1784, 1785, and 1786.

7. Amend § 712.2 by revising paragraph (d) to read as follows:

**§ 712.2 How much can an FCU invest in or loan to CUSOs, and what parties may participate?**

\* \* \* \* \*

(d) *Measurement for calculating regulatory limitation.* For purposes of paragraphs (a) and (b) of this section:

(1) *Paid-in and unimpaired capital and surplus* means shares plus post-closing, undivided earnings (this does not include regular reserves or special reserves required by law, regulation or special agreement between the credit union and its regulator or share insurer); and

(2) Total investments in and total loans to CUSOs will be measured consistent with GAAP.

\* \* \* \* \*

**PART 715—SUPERVISORY COMMITTEE AUDITS AND VERIFICATIONS**

8. Revise the authority citation for part 715 to read as follows:

**Authority:** 12 U.S.C. 1761(b), 1761d, 1782(a)(6).

9. Amend § 715.2(l) by revising the first sentence to read as follows:

**§ 715.2 Definitions used in this part.**

\* \* \* \* \*

(l) Supervisory committee refers to a supervisory committee as defined in Section 111(b) of the Federal Credit Union Act, 12 U.S.C. 1761(b). \* \* \*

\* \* \* \* \*

**PART 723—MEMBER BUSINESS LOANS**

10. The authority citation for part 723 continues to read as follows:

**Authority:** 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

11. Amend § 723.4 by revising the second sentence to read as follows:

**§ 723.4 What are the other applicable regulations?**

\* \* \* Except as required by part 741 of this chapter, federally insured state-chartered credit unions are not required to comply with the provisions of § 701.21(a) through (g).

**PART 725—NATIONAL CREDIT UNION ADMINISTRATION CENTRAL LIQUIDITY FACILITY**

12. The authority citation for part 725 continues to read as follows:

**Authority:** 12 U.S.C. 1795–1795f.

13. Amend § 725.2 by revising paragraph (o) to read as follows:

**§ 725.2 Definitions.**

\* \* \* \* \*

(o) *Paid-in and unimpaired capital and surplus* means shares and deposits plus post-closing, undivided earnings. This does not include regular reserves or special reserves required by law, regulation or special agreement between the credit union and its regulator or share insurer.

\* \* \* \* \*

**PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION**

14. The authority citation for part 790 continues to read as follows:

**Authority:** 12 U.S.C. 1766, 1789, 1795f.

15. Amend § 790.2(b)(13) by revising the heading to read as follows:

**§ 790.2 Central and regional office organization.**

\* \* \* \* \*

(b) \* \* \*

(13) Office of Credit Union Development. \* \* \*

\* \* \* \* \*

[FR Doc. 01–15444 Filed 6–20–01; 8:45 am]

**BILLING CODE 7535–01–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 90–ANE–25–AD]

**Airworthiness Directives; General Electric Company (GE) CF6–45 and CF6–50 Series Turbofan Engines**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** This action withdraws a notice of proposed rulemaking (NPRM) that proposed to revise an existing airworthiness directive (AD), applicable to GE CF6–45 and CF6–50 series turbofan engines. That action would have revised an existing AD to require the same inspections on reworked high pressure compressor (HPC) rear shafts as those HPC rear shafts covered by the current amendment. That proposal was prompted by the need to ensure that the additional reworked HPC rear shafts receive the same inspections as part numbers covered by the current amendment. Since that NPRM was issued, the FAA has determined that the repetitive inspections of reworked HPC rear shafts will instead be incorporated into the final rule, AD 2001–12–20, for a new design HPC air duct. Accordingly, the proposed rule is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7192; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to revise an existing AD, applicable to GE CF6–45 and CF6–50 series turbofan engines, was published in the **Federal Register** on October 12, 2000 (65 FR 60597). The proposed rule would have revised AD 91–10–03, R1, to add HPC rear shaft rework P/N's to the AD. That action was prompted by the need to ensure that the additional HPC rear shafts receive the same inspections as part numbers covered by the current amendment. The proposed actions were intended to detect and replace cracked HPC rear shafts, which, if not replaced, could lead to an uncontained engine failure.

The FAA received a comment that notes that a new effective date of the AD revision could be misconstrued and result in parts continuing in service without the required inspections, for longer than originally intended by the current AD.

The FAA agrees. Upon further consideration, the FAA has determined that the proposed addition of repetitive inspections of reworked HPC rear shafts will instead be incorporated into the final rule for a new design HPC air duct. The final rule for the new design air duct, AD 2001–12–20, requires that existing HPC rear shafts be reworked for compatibility with new design air ducts, inspected at the time of rework, and repetitively inspected at specified