

Category	Subject	Reg. Cite
b. Investment and Deposits.	Maximum Borrowing Investment and Deposit Activities	12 CFR 741.2. 12 CFR part 703.
	Fixed Assets Credit union Service Organizations (CUSOs) Payment on Shares by Public Units and Nonmembers Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions.	12 CFR 701.36. 12 CFR part 712. 12 CFR 701.32. 12 CFR 701.34.
c. Miscellaneous Activities.	Share, Share Draft, and Share Certificate Accounts Treasury Tax and Loan Depositories; Depositories and Financial Agents of the Government. Refund of Interest Incidental Powers	12 CFR 701.35. 12 CFR 701.37. 12 CFR 701.24. 12 CFR part 721.
	Charitable Contributions and Donations Credit Union Service Contracts Purchase, Sale and Pledge of Eligible Obligations	12 CFR 701.25. 12 CFR 701.26. 12 CFR 701.23.
V. B. Categories and Regulations About Which NCUA Will Seek Comment Later		
1. Agency Programs	Community Development Revolving Loan Program Central Liquidity Facility Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions.	12 CFR part 705. 12 CFR part 725. 12 CFR 701.34.
2. Capital	Regulatory Flexibility Program	12 CFR part 742.
3. Consumer Protection	Prompt Corrective Action Adequacy of Reserves Nondiscrimination Requirement (Fair Housing) Truth in Savings (TIS) Loans in Areas Having Special Flood Hazards Privacy of Consumer Financial Information Share Insurance	12 CFR part 702. 12 CFR 741.3(a). 12 CFR 701.31. 12 CFR part 707. 12 CFR part 760. 12 CFR part 716. 12 CFR part 745.
4. Corporate Credit Unions	Advertising	12 CFR part 740.
5. Directors, Officers and Employees.	Disclosure of Share Insurance Notice of termination of Excess Insurance Coverage Uninsured Membership Shares	12 CFR 741.10. 12 CFR 741.5. 12 CFR 741.9.
	Corporate Credit Unions Loans and Lines of Credit to Officials	12 CFR part 704. 12 CFR 701.21(d).
6. Money Laundering	Reimbursement, Insurance and Indemnification of Officials and Employees Benefits for Employees of Federal Credit Unions	12 CFR 701.33. 12 CFR 701.19.
7. Rules of Procedure	Management Official Interlocks Fidelity Bond and Insurance Coverage Report of Crimes or Suspected Crimes	12 CFR part 711. 12 CFR 713. 12 CFR 748.1(c).
8. Safety & Soundness	Bank Secrecy Act Liquidation (Involuntary and Voluntary) Uniform Rules of Practice and Procedure Local Rules of Practice and Procedure	12 CFR 748.2. 12 CFR parts 709 and 710. 12 CFR part 747 subpart A. 12 CFR part 747 subpart B.
	Lending Investments	12 CFR 701.21. 12 CFR part 703.
	Supervisory Committee Audits and Verifications Security Programs	12 CFR part 715. 12 CFR 748.
	Guidelines for Safeguarding Member Information	12 CFR part 748, Appendix A.
	Records Preservation Program and Record Retention Appendix	12 CFR part 749.
	Appraisals	12 CFR 722.
	Examination	12 CFR 741.1.
	Regulations Codified Elsewhere in NCUA's Regulations as applying to Federal Credit Unions that also apply to Federally insured state-chartered credit unions.	12 CFR part 741, subpart B.

By the National Credit Union Administration Board on June 26, 2003.

Becky Baker,

Secretary of the Board.

[FR Doc. 03-16795 Filed 7-2-03; 8:45 am]

BILLING CODE 7535-01-P

**NATIONAL CREDIT UNION
ADMINISTRATION**

12 CFR Part 701

**Organization and Operations of
Federal Credit Unions**

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: NCUA proposes to update and clarify the definitions of certain terms used in NCUA's loan participation rule. Specifically, the definition of "credit union organization" is being amended to conform to the terms of the credit union service organizations (CUSOs) rule. Also, the definition of "financial

organization" is being broadened to provide federal credit unions (FCUs) greater flexibility in choosing appropriate loan participation partners. **DATES:** Comments must be received on or before September 2, 2003.

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 are encouraged to fax comments to (703) 518-6319 or email comments to regcomments@ncua.gov instead of mailing or hand-delivering them. Whatever method you choose, *please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:

Background

Engaging in loan participations is an effective tool for FCUs to manage liquidity and concentration risk. It is also a way for FCUs to comply with NCUA or self-imposed lending limits. Additionally, small FCUs are able to improve the diversification of their loan portfolios by participating in loans originated by larger FCUs that have the resources to underwrite a wider variety of loan types. For these and other benefits, it is not surprising that FCU interest in loan participations appears to be increasing.

NCUA staff has identified § 701.22, the loan participation rule, as a regulation in need of updating and clarification. Accordingly, NCUA is proposing the following amendments to improve the rule.

Section 701.22 of NCUA's regulations provides that an FCU may engage in loan participations with "eligible organizations" and defines that term as a credit union, credit union organization, or financial organization. 12 CFR 701.22(b), 12 CFR 701.22(a)(2). The rule further defines "credit union organization" and "financial organization." 12 CFR 701.22(a)(4) and (a)(5).

The Federal Credit Union Act (Act) defines "credit union organization" as "any organization as determined by the Board, which is established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of the credit unions they serve." 12 U.S.C. 1757(5)(D). Section 701.22(a)(4) echoes this definition, but specifically excludes, among others, some CUSOs, which it describes as "corporations or other

businesses which principally provide services to credit union members as opposed to corporations or businesses whose business relates to the daily in-house operation of credit unions." 12 CFR 701.22(a)(4). Formerly, NCUA's CUSO rule distinguished between CUSOs providing operational services to FCUs and those providing financial services to FCU members.

In a 1998 final rule, NCUA eliminated that distinction in the CUSO rule. 63 FR 10743 (March 5, 1998). Under NCUA's regulations, CUSOs are entities that engage in providing products and services related to the routine daily operations of credit unions to credit unions and credit union members. 12 CFR 712.3, 12 CFR 712.5. NCUA proposes to amend the definition of "credit union organization" in the loan participation rule to conform to NCUA's interpretation of that term in the CUSO rule.

The Act does not define the term "financial organization." Section 701.22(a)(5) defines it as "any federally chartered or federally insured financial institution." 12 CFR 701.22(a)(5). Although the Act is silent, the rule derives its definition from the legislative history of the 1977 public law that granted FCUs various additional authorities, including the authority to engage in loan participations. H.R. Rep. No. 95-23, at 12 (1977), reprinted in 1977 U.S.C.C.A.N. 115. In granting this authority, Congress expressed its intent to enhance the ability of FCUs to serve their members' loan demands. Congress also expressed its concern that originating FCUs must maintain discipline in the origination process. To ensure that discipline and good underwriting standards prevail, Congress requires originating FCUs to retain at least a ten percent interest in the face amount of all loans they participate out.

Consistent with congressional intent to enhance the ability of FCUs to serve their members' loan demands through participations, NCUA believes it is appropriate to expand the regulatory definition of "financial organization" to include state and federal government agencies. NCUA is aware that there are various state and federal government supported loan programs that are particularly geared to underserved borrowers. These types of programs, which include agricultural and small business lending, are ideally suited to the mission of FCUs. Also, this will give FCUs greater flexibility in choosing appropriate participation partners. NCUA does not read anything in the legislative history to suggest that

Congress would object to this limited and prudent amendment.

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 credit unions (those under one million dollars in assets). The proposed rule expands the pool of eligible organizations with whom an FCU may engage in loan participations, without imposing any additional regulatory burden. The proposed rule would 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. The proposed rule would not have substantial direct effects 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 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 would 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 in 12 CFR Part 701

Credit unions, Mortgages, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on June 26, 2003.

Becky Baker,
Secretary of the Board.

For the reasons stated above, NCUA proposes to amend 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. 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 and P.L. 101–73. 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.

2. Section 701.22 is amended by revising paragraphs (a)(4) and (a)(5) to read as follows:

§ 701.22 Loan participation.

(a) * * *

(4) *Credit union organization* means any credit union service organization meeting the requirements of part 712 of this chapter. This term does not include trade associations or membership organizations principally composed of credit unions.

(5) *Financial organization* means: (i) Any federally chartered or federally insured financial institution; and

(ii) Any state or federal government agency and their subdivisions.

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[FR Doc. 03–16793 Filed 7–2–03; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION**12 CFR Part 745****Share Insurance and Appendix**

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: NCUA proposes to amend its share insurance rules. The amendments simplify and clarify these rules and provide parity with the deposit insurance rules of the Federal Deposit Insurance Corporation (FDIC). Specifically, the amendments: clarify how revocable trust accounts are established and insured; provide continuation of coverage following the

death of a member and for separate coverage after the merger of insured credit unions for limited periods of time; and clarify that there is coverage for Coverdell Education Savings Accounts, formerly Education IRAs.

DATES: Comments must be received on or before September 2, 2003.

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 are encouraged to fax comments to (703) 518–6319 or email comments to regcomments@ncua.gov instead of mailing or hand-delivering them. Whatever method you choose, *please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:**A. Background**

In accordance with NCUA's regulatory review process, NCUA staff has identified part 745 as a regulation in need of updating, clarification and simplification. To that end, NCUA is proposing the below amendments to improve part 745 and to maintain parity between the separate federal insurance programs administered by NCUA and FDIC.

B. Proposed Amendments*Revocable Trust Accounts*

A revocable trust account is a testamentary account that evidences the owner's intent to have funds in the account pass to named beneficiaries upon the owner's death. NCUA is increasingly receiving inquiries from credit unions and credit union members regarding three aspects of revocable trust accounts. Specifically, these inquiries concern how: (1) Revocable trusts are created; (2) an owner demonstrates testamentary intent; and (3) the interests of nonqualifying beneficiaries are treated.

Unlike more complicated trusts such as living trusts, which require formal, often complex, written trust documents, simple revocable trusts can be created at the credit union merely by indicating that intent in the title to an account. Common terms used in the account title to create a revocable trust and indicate the owner's intent include "payable on death", "in trust for", and "as trustee for", or acronyms for these phrases, respectively, POD, ITF and ATF. For example, the account title "John Smith

POD to Mary Smith" is sufficient to create a revocable trust account. Although not preferable, the account title "John Smith POD" is also sufficient to create a revocable trust account. To be insurable as a revocable trust account, however, the beneficiaries must be specifically named in the credit union's account records. NCUA believes that naming the beneficiaries in the account title is the most effective way of establishing insurance coverage.

NCUA's share insurance rules provide that an owner's funds in a revocable trust account are separately insured up to \$100,000 for each qualifying beneficiary named in the account. 12 CFR 745.4. A qualifying beneficiary is the owner's spouse, child, grandchild, parent, brother or sister. *Id.* All others are nonqualifying beneficiaries.

NCUA treats the interests of nonqualifying beneficiaries named in the revocable trust account as the individually owned funds of the owner of the account. In this context, these funds would be aggregated with all other individual accounts of the owner and insured up to \$100,000. The current language of § 745.4(c) could be read as providing that these nonqualifying beneficiary interests will only be insured as the individually owned funds of the owner if the owner has actually opened an individual account in the insured credit union where the revocable trust account is held. 12 CFR 745.4(c). NCUA proposes to revise that section to make clear that it will treat nonqualifying beneficiary interests as the individually owned funds of the owner even where the owner has not actually opened an individual account at the credit union. This is consistent with FDIC's treatment of these funds.

Insurance Coverage Following the Death of a Member

The death of a member results in an immediate change in the ownership of the member's share accounts. This change in ownership could significantly change the amount of share insurance coverage available for those accounts, most likely reducing coverage.

For example, a husband and wife may hold a joint account, a joint revocable trust account for the benefit of their two children, and two individual accounts in their own names. Assuming these accounts satisfy all applicable requirements, these four accounts would be insured up to a maximum of \$800,000. The \$800,000 is broken down as follows: \$200,000 for the joint account; \$400,000 for the joint revocable trust account; and \$100,000 for each of the two individual accounts. Upon the death of either the husband or wife,