

Proposed Rules

Federal Register

Vol. 69, No. 77

Wednesday, April 21, 2004

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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1216

[Docket No. FV-04-701]

Peanut Promotion, Research and Information Order; Continuance Referendum

AGENCY: Agricultural Marketing Service, Agriculture.

ACTION: Notice of a Continuance Referendum.

SUMMARY: This document directs that a referendum be conducted among the eligible producers of peanuts to determine whether they favor continuance of the Peanut Promotion, Research and Information Order (Order).

DATES: This referendum will be conducted from May 10, 2004 through June 11, 2004. To vote in this referendum, producers must have paid assessments on peanuts produced during the representative period from October 1, 2002 to April 30, 2004.

ADDRESSES: Copies of the Order may be obtained from: Referendum Agent, Research and Promotion Branch (RP), Fruit and Vegetable Programs (FV), AMS, USDA, Stop 0244, Room 2535-S, 1400 Independence Avenue, SW., Washington, DC 20250-0244, telephone (888) 720-9917 (toll free), fax (202) 205-2800, e-mail deborah.simmons@usda.gov.

SUPPLEMENTARY INFORMATION: Pursuant to the Commodity Promotion, Research and Information Act of 1996 (7 U.S.C. 7411-7425) (Act), it is hereby directed that a referendum be conducted to ascertain whether continuance of the Order is favored by producers of peanuts. The Order is authorized under the Act.

The representative period for establishing voter eligibility for the referendum shall be the period from October 1, 2002 to April 30, 2004. Persons who are producers of peanuts and paid assessments at the time of the

referendum and during the representative period are eligible to vote. Persons who received an exemption from assessments for the entire representative period are ineligible to vote. The referendum shall be conducted by mail from May 10, 2004 through June 11, 2004.

Section 518 of the Act authorizes continuance referenda. Under section 1216.82 of the order, the Department of Agriculture (Department) shall conduct a referendum every five years or when 10 percent or more of the eligible voters petition the Secretary of Agriculture to hold a referendum to determine if persons subject to assessment favor continuance of the Order. The Department would continue the Order if continuance of the Order is approved by a simple majority of the producers voting in the referendum.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the referendum ballot has been approved by the Office of Management and Budget (OMB) and assigned OMB NO. 0581-0093. It has been estimated that there are approximately 17,000 producers who will be eligible to vote in the referendum. It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot.

Referendum Order

Deborah S. Simmons and Margaret B. Irby, RP, FV, AMS, USDA, Stop 0244, Room 2535-S, 1400 Independence Avenue, SW., Washington, DC 20250-0244, are designated as the referendum agents to conduct this referendum. The referendum procedures 7 CFR 1216.100 through 1216.107, which were issued pursuant to the Act, shall be used to conduct the referendum.

The referendum agents will mail the ballots to be cast in the referendum and voting instructions to all known producers prior to the first day of the voting period. Persons who are producers and paid assessments at the time of the referendum and during the representative period are eligible to vote. Persons who received an exemption from assessments during the entire representative period are ineligible to vote. Any eligible producer who does not receive a ballot should contact the referendum agent no later than one week before the end of the voting period. Ballots must be received

by the referendum agent after May 10, 2004 but before June 11, 2004, in order to be counted.

Dated: April 19, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04-9134 Filed 4-19-04; 1:01 pm]

BILLING CODE 3410-02-P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 742

Federal Credit Union Ownership of Fixed Assets

AGENCY: National Credit Union Administration.

ACTION: Proposed rule with request for comments.

SUMMARY: The National Credit Union Administration (NCUA) Board is proposing amendments to its fixed asset rule. The fixed asset rule governs federal credit union (FCU) ownership of fixed assets and, among other things, limits investment in fixed assets to five percent of an FCU's shares and retained earnings. Most of the proposed amendments clarify and reorganize the requirements of the current rule to make it easier to understand. The only substantive proposed changes are to: (1) Eliminate the requirement that an FCU, when calculating its investment in fixed assets, include its investments in any entity that holds fixed assets used by the FCU; and (2) establish a time frame for submission of requests for waiver of the requirement for partial occupation of premises acquired for future expansion.

DATES: Comments must be received on or before June 21, 2004.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web site: http://www.ncua.gov/news/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include "[Your name] Comments on Proposed Rule 701.36, Federal Credit Union

Ownership of Fixed Assets” in the e-mail subject line.

- Fax: (703) 518-6319. Use the subject line described above for e-mail.

- Mail: Address to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- Hand Delivery/Courier: Same as mail address.

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

SUPPLEMENTARY INFORMATION:

Background

The Federal Credit Union Act authorizes an FCU to purchase, hold, and dispose of property necessary or incidental to its operations. 12 U.S.C. 1757(4). Generally, an FCU may only invest in property it intends to use to transact credit union business, that is, to support its internal operations or serve its members. 12 CFR 721.3(d). NCUA’s fixed asset rule limits an FCU’s investment in fixed assets and imposes requirements on the planning for, use of, and disposal of real property acquired for future expansion. 12 CFR 701.36.

The NCUA Board has a policy of continually reviewing NCUA regulations to “update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.” NCUA Interpretive Ruling and Policy Statement (IRPS) 87-2, Developing and Reviewing Government Regulations. As a result of the NCUA’s 2003 review, the Board determined that the fixed asset rule should be updated.

Summary of Proposed Changes

The only substantive proposed changes are to (1) Eliminate the requirement that an FCU, when calculating its investment in fixed assets, include its investments in any entity that holds fixed assets used by the FCU, and (2) Establish a time frame for submission of requests for waiver of the requirement for partial occupation of premises acquired for future expansion. The Board believes that neither of these proposals impose any new burden on FCUs.

The proposed rule reorganizes the paragraph structure. It retains the five percent limit on investment in fixed assets as a percentage of an FCU’s shares and retained earnings, currently located in § 701.36(c), but makes it the lead paragraph, § 701.36(a). The current § 701.36(a), which states only that “[a]

Federal credit union’s ownership in fixed assets shall be limited as described in this chapter,” is unnecessary and the proposed rule deletes it. The proposed rule moves the definitions paragraph, currently in § 701.36(b), to the end of the section. Sections 701.36(c) and (d) are renumbered as § 701.36(b) and (c), respectively.

In addition to reorganization of the paragraph structure, the proposed rule contains amendments clarifying the provisions governing an FCU’s plans for future expansion into fixed assets and simplifying the rule’s language to make it easier to read and understand. The proposed rule also adds a cross reference to NCUA’s Regulatory Flexibility Program (RegFlex) rule. 12 CFR part 742. Federal credit unions that qualify for RegFlex treatment are currently exempt from the five percent limit on investment in fixed assets. 12 CFR 742.4(a), 701.36(c). In addition, the proposed rule contains a technical amendment to the RegFlex rule that reflects the proposed reorganization of the fixed asset rule.

Discussion of Particular Proposed Amendments

Proposed § 701.36(a)

The current § 701.36(c), Investment in Fixed Assets, would become paragraph (a). The proposed rule retains the current requirement that FCUs with \$1,000,000 or more in assets cannot invest in fixed assets if the investment would cause the aggregate of all the FCU’s fixed assets to exceed five percent of the FCU’s shares and retained earnings. The current rule provides a waiver process so that FCUs may apply for a waiver of the five percent limitation, and the proposed rule retains these waiver provisions but reorganizes them to simplify and make them easier to follow.

Proposed § 701.36(b)

The current § 701.36(d), Premises, would become paragraph (b). This paragraph contains provisions on real property owned by an FCU that is not currently used to transact credit union business. 12 CFR 701.36(d). The Board has several proposed amendments to this paragraph.

The Board proposes to change the title of this paragraph to “Premises Not Currently Used to Transact Credit Union Business” to better indicate its scope.

The current subparagraph (d)(1) provides that an FCU must accomplish partial use of its real property within three years of acquisition unless the FCU obtains a waiver. 12 CFR 701.36(d)(1). The proposal clarifies that

requests for waiver must be in writing and submitted to NCUA within 30 months of acquisition. The proposed amendments would also clarify that partial use occurs when FCU staff occupy some part of the space on a full-time basis.

The current rule states that “[a]fter real property acquired for future expansion has been held for one year, a board resolution with definitive plans for utilization must be available for inspection by an NCUA examiner.” *Id.* Those plans must address full use since FCUs do not have the authority to own and lease out space indefinitely for purposes unrelated to FCU operations or member service. The proposed amendments clarify the full use planning requirement and that full use occurs when the premises are completely occupied by the FCU, or by some combination of the FCU, credit union service corporations (CUSOs), and credit union vendors, on a full-time basis. CUSO and vendor activities must be primarily to support the operations of the FCU or serve its members.

The Board also intends to clarify and simplify the current provisions on abandoned premises. 12 CFR 701.36(b)(5), 701.36(d)(2). The Board proposes to revise the provision in paragraph (d)(2) that an FCU “shall endeavor to dispose of ‘abandoned premises’ at a price sufficient to reimburse the FCU for its investment and costs of acquisition” to state that an FCU must seek fair market value for the property. The Board recognizes that changing market conditions may affect an FCU’s ability to recover its investment and costs of acquisition. The proposal retains the requirements that an FCU document its efforts to sell abandoned premises and complete the sale within five years.

Proposed § 701.36(c)

The current § 701.36(d), Prohibited Transactions, would become paragraph (c). The proposal retains the current prohibition on an FCU acquiring or leasing property from the FCU’s insiders, their family members, or corporations and partnerships in which the insider has a significant ownership interest. As a clarification, the proposal revises the rule to include limited liability companies and other entities. The proposed rule also simplifies the paragraph’s introductory language.

Proposed § 701.36(d)

FCUs that qualify for the RegFlex Program are exempt from the five percent limitation on investment in fixed assets. 12 CFR 701.36(c), part 742. Accordingly, the proposed rule adds a

new paragraph to § 701.36 with a cross-reference to the RegFlex Program. The proposed rule also states that FCUs that once qualified for the RegFlex Program and its associated exemptions but no longer qualify for RegFlex must comply with all the provisions of the fixed asset rule. For example, a RegFlex FCU that exceeds the five percent limitation on investment in fixed assets and subsequently loses its RegFlex qualification must either reduce its fixed asset holdings below five percent or obtain a waiver.

Proposed § 701.36(e)

The current § 701.36(b), Definitions, would become paragraph (e). The current rule defines “investment in fixed assets.” 12 CFR 701.36(b)(4). As provided in subparagraph (iv), the definition includes any investments in, and loans to, a partnership or corporation, including a CUSO, that holds any fixed assets used by the FCU. 12 CFR 701.36(b)(4)(iv). The proposed rule deletes this subparagraph (iv) element of the definition as unnecessary and, in some cases, duplicative. Generally, FCUs may only invest in entities that are CUSOs, and FCUs are expected to pay the fair market value (FMV) for the use of CUSO assets. Lease payments are captured as part of the FCU’s investment in fixed assets through the subparagraph (iii) provision on capital and operating lease payments. 12 CFR 701.36(b)(4)(iii). Accordingly, subparagraph (iv) could well cause an FCU to overstate its investment in fixed assets when it leases CUSO property. The Board also notes that the Federal Credit Union Act limits FCU investment in CUSOs to one percent of its paid in and unimpaired capital and surplus, and, even without subparagraph (iv), this restricts the use of CUSOs to invest in fixed assets. 12 U.S.C. 1757(7)(I).

The current rule also defines “retained earnings” as “regular reserve, reserve for contingencies, supplemental reserves, reserve for losses and undivided earnings.” 12 CFR 701.36(b)(7). The proposed rule updates this definition to include “and other appropriations of undivided earnings as designated by management or the Administration” to recognize other reserve accounts that may be created out of undivided earnings consistent with generally accepted accounting principles. The proposed rule also separates the definitions of “shares” and “retained earnings.”

Finally, the proposed rule alphabetizes all the definitions to make them easier to locate.

Proposed § 742.4(a)

The proposed rule includes a technical amendment to the RegFlex rule reflecting the proposed restructuring of the fixed asset rule.

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 (those credit unions under ten million dollars in assets). NCUA believes that, under the current rule, the only burden imposed on small credit unions is the requirement to submit a waiver request if investment in fixed assets exceed 5% of retained shares and earnings. There are presently about 4,540 small federally-insured credit unions. Each year, only about ten of these credit unions submit a waiver request, and NCUA estimates that each waiver request takes about ten hours to prepare. Accordingly, NCUA does not believe the current rule imposes a significant economic impact on a substantial number of small entities. Since the proposed rule does not change the burdens associated with the current rule, the proposed rule also does 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

Section 701.36 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the NCUA has submitted a copy of this section as part of an information collection package to the Office of Management and Budget (OMB) for its review and approval for reinstatement of Collection of Information, FCU Ownership of Fixed Assets, Control Number 3133-0040.

Section 701.36 protects the safety and soundness of FCUs by ensuring that FCUs do not over invest in unproductive fixed assets. The regulation also ensures that FCUs do not purchase and hold fixed assets for purposes other than the internal operations of the FCU or serving the FCU’s members.

NCUA estimates the reporting and recordkeeping burden for this collection of information to be about 325 hours, calculated as follows:

(1) *Waiver of five percent limitation.* NCUA estimates the annual burden for preparation of an application for waivers to the limitation on investments in fixed assets as follows:

Respondents: 15
Responses × 1
Hours per respondent × 15
Annual reporting burden: 225

(2) *Plan for full occupation of premises.* NCUA estimates the annual burden associated with preparation of definitive plans for full occupation in connection with fixed asset acquired for future expansion but not fully occupied after one year as follows:

Respondents: 5
Responses × 1
Hours per respondent × 15
Annual reporting burden: 75

(3) *Waiver of requirement for partial occupation.* NCUA estimates the annual burden associated the acquisition of premises for future expansion and seeking NCUA approval for plans not to partially occupy the property within 3 years as follows:

Respondents: 5
Responses × 1
Hours per respondent × 5
Annual reporting burden: 25

Total annual burden hours = 325.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to Joseph F. Lackey, the Office of Information and Regulatory Affairs, OMB, Attn: Joseph F. Lackey, Room 10226, New Executive Office Building, Washington, DC 20503.

The NCUA considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the NCUA, including whether the information will have a practical use;
- Evaluating the accuracy of the NCUA’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

The Paperwork Reduction Act requires OMB to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the

Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the NCUA on the proposed regulations.

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, Public Law 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 701

Credit unions.

12 CFR Part 742

Credit unions, Reporting and recordkeeping requirements

By the National Credit Union Administration Board on April 15, 2004.

Becky Baker,

Secretary of the Board.

Accordingly, the NCUA proposes to amend 12 CFR parts 701 and 742:

PART 701—ORGANIZATION AND OPERATION 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. 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.

2. Revise § 701.36 to read as follows:

§ 701.36 FCU Ownership of Fixed Assets.

(a) *Investment in Fixed Assets.* (1) No federal credit union with \$1,000,000 or more in assets may invest in any fixed assets if the investment would cause the aggregate of all such investments to exceed five percent of the credit union's shares and retained earnings.

(2) The Administration may waive the prohibition in paragraph (a)(1) of this section.

(i) A federal credit union desiring a waiver must submit a written request to the NCUA regional office having jurisdiction over the geographical area in which the credit union's main office is located. The request must describe in detail the contemplated investment and the need for the investment. The request must also indicate the approximate aggregate amount of fixed assets, as a percentage of shares and retained earnings, that the credit union would hold after the investment.

(ii) The regional director will inform the requesting credit union, in writing, of the date the request was received and of any additional documentation that the regional director might require in support of the waiver request.

(iii) The regional director will approve or disapprove the waiver request in writing within 45 days after receipt of the request and all necessary supporting documentation. If the regional director approves the waiver, the regional director will establish an alternative limit on aggregate investments in fixed assets, either as a dollar limit or as a percentage of the credit union's shares and retained earnings. Unless otherwise specified by the regional director, the credit union may make future acquisition of fixed assets only if the aggregate all of such future investments in fixed assets does not exceed an additional one percent of the shares and retained earnings of the credit union over the amount approved by the regional director.

(iv) If the regional director does not notify the credit union of the action taken on its request within 45 calendar days of the receipt of the waiver request or the receipt of additional requested supporting information, whichever occurs later, the credit union may proceed with its proposed investment in fixed assets. The investment, and any

future investments in fixed assets, must not cause the credit union to exceed the aggregate investment limit described in its waiver request.

(b) *Premises Not Currently Used to Transact Credit Union Business.* (1) When a federal credit union acquires premises for future expansion and does not fully occupy the space within one year the credit union must have a board resolution in place by the end of that year with definitive plans for full occupation. Premises are fully occupied when the credit union, or a combination of the credit union, CUSOs, or vendors, use the entire space on a full-time basis. CUSOs and vendors must be using the space primarily to support the credit union or to serve the credit union's members. The credit union must make any plans for full occupation available to an NCUA examiner upon request.

(2) When a federal credit union acquires premises for future expansion, the credit union must partially occupy the premises within a reasonable period, not to exceed three years. Premises are partially occupied when the credit union is using some part of the space on a full-time basis. The Administration may waive this partial occupation requirement in writing upon written request. The request must be made within 30 months after the property is acquired.

(3) A federal credit union must make diligent efforts to dispose of abandoned premises and any other real property not intended for use in the conduct of credit union business. The credit union must seek fair market value for the property, and record its efforts to dispose of abandoned premises. After premises have been abandoned for four years, the credit union must publicly advertise the property for sale. Unless otherwise approved in writing by the Administration, the credit union must complete the sale within five years of abandonment.

(c) *Prohibited Transactions.* (1) Without the prior written approval of the Administration, no federal credit union may invest in premises through an acquisition or a lease of one year or longer from any of the following:

(i) A director, member of the credit committee or supervisory committee, or senior management employee of the federal credit union, or immediate family member of any such individual.

(ii) A corporation in which any director, member of the credit committee or supervisory committee, official, or senior management employee, or immediate family members of any such individual, is an officer or director, or has a stock interest of 10 percent or more.

(iii) A partnership, limited liability company, or other entity in which any director, member of the credit committee or supervisory committee, or senior management employee, or immediate family members of any such individual, is a general partner, or a limited partner or entity member with an interest of 10 percent or more.

(2) The prohibition contained in paragraph (c)(1) of this section also applies to a lease from any other employee if the employee is directly involved in investments in fixed assets unless the board of directors determines that the employee's involvement does not present a conflict of interest.

(3) All transactions with business associates or family members not specifically prohibited by this paragraph (c) must be conducted at arm's length and in the interest of the credit union.

(d) *Regulatory Flexibility Program.* Federal credit unions that qualify for the Regulatory Flexibility Program provided for in part 742 of this chapter are exempt from the five percent limitation described in paragraph (a) of this section. Federal credit unions that lose their eligibility for the Regulatory Flexibility Program must comply with paragraph (a).

(e) *Definitions*—As used in this section:

(1) *Abandoned premises* means real property previously used to transact credit union business but no longer used for that purpose and real property originally acquired for future expansion for which the credit union no longer contemplates such use.

(2) *Fixed assets* means premises, furniture, fixtures and equipment.

(3) *Furniture, fixtures, and equipment* means all office furnishings, office machines, computer hardware and software, automated terminals, and heating and cooling equipment.

(4) *Investments in fixed assets* means:

(i) Any investment in improved or unimproved real property which is being used or is intended to be used as premises;

(ii) Any leasehold improvement on premises;

(iii) The aggregate of all capital and operating lease payments on fixed assets, without discounting commitments for future payments to present value; and

(iv) Any investment in furniture, fixtures and equipment.

(5) *Immediate family member* means a spouse or other family members living in the same household.

(6) *Premises* means any office, branch office, suboffice, service center, parking lot, other facility, or real estate where

the credit union transacts or will transact business.

(7) *Senior management employee* means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller).

(8) *Shares* means regular shares, share drafts, share certificates, other savings.

(9) *Retained earnings* means undivided earnings, regular reserve, reserve for contingencies, supplemental reserves, reserve for losses, and other appropriations from undivided earnings as designated by management or the Administration.

PART 742—REGULATORY FLEXIBILITY PROGRAM

3. The authority citation for part 742 continues to read as follows:

Authority: 12 U.S.C 1756 and 1766.

4. Revise § 742.4(a) to read as follows:

§ 742.4 From what NCUA regulations will I be exempt?

(a) RegFlex credit unions are exempt from the provisions of the following NCUA regulations without restrictions or limitations: § 701.25, § 701.32(b) and (c), § 701.36(a), § 703.5(b)(1)(ii) and (2), § 703.12(c), § 703.16(b), and § 723.7(b) of this chapter.

* * * * *

[FR Doc. 04-9002 Filed 4-20-04; 8:45 am]

BILLING CODE 7535-01-P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 705

Community Development Revolving Loan Program for Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: NCUA proposes to revise its regulations pertaining to the Community Development Revolving Loan Program For Credit Unions (CDRLP) to permit student credit unions to participate in the program.

DATES: Comments must be received on or before May 21, 2004.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- NCUA Web site: http://www.ncua.gov/news/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.

- E-mail: Address to regcomments@ncua.gov. Include “[Your name] Comments on Proposed Rule 705, Community Development Revolving Loan Program For Credit Unions” in the e-mail subject line.

- Fax: (703) 518-6319. Use the subject line described above for e-mail.

- Mail: Address to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- Hand Delivery/Courier: Same as mail address.

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

SUPPLEMENTARY INFORMATION:

A. Background

Part 705 of NCUA's regulations implements the CDRLP. 12 CFR part 705. The purpose of the CDRLP is to support the community development activities of participating credit unions. 12 CFR 705.2. Participating credit unions are defined as those that are specifically involved in the stimulation of economic development and community revitalization activities in the communities they serve, whose membership consists of predominantly low-income members as reflected by a current low-income designation pursuant to § 701.34, § 741.204, or other applicable standards, and have submitted an application for participation and have been selected. 12 CFR 705.3(b); 12 CFR 701.34; 12 CFR 741.204. The CDRLP achieves its purpose by making low interest loans and providing technical assistance to those credit unions. A credit union that participates in the CDRLP increases economic and employment opportunities for its low-income members.

Historically, NCUA has taken the position that although student credit unions are designated as low-income credit unions for purposes of receiving nonmember deposits, they do not qualify to participate in the CDRLP because they are not specifically involved in the stimulation of economic development activities and community revitalization. 61 FR 50694 (September 27, 1996); 58 FR 21642 (April 23, 1993). The NCUA believes this historical perspective underestimates the importance of student credit unions and the impact they have on the economic