

## National Credit Union Administration

## § 741.3

credit union whose accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF).

### Subpart A—Regulations That Apply to Both Federal Credit Unions and Federally Insured State-Chartered Credit Unions and That Are Not Codified Elsewhere in NCUA's Regulations

#### § 741.1 Examination.

As provided in Sections 201 and 204 of the Act (12 U.S.C. 1781 and 1784), the NCUA Board is authorized to examine any insured credit union or any credit union making application for insurance of its accounts. Such examination may require access to all records, reports, contracts to which the credit union is a party, and information concerning the affairs of the credit union. Upon request, such documentation must be provided to the NCUA Board or its representative. Any credit union which makes application for insurance will be required to pay the cost of such examination and processing. To the maximum extent feasible, the NCUA Board will utilize examinations conducted by state regulatory agencies.

#### § 741.2 Maximum borrowing authority.

(a) Any credit union which makes application for insurance of its accounts pursuant to title II of the Act, or any insured credit union, must not borrow, from any source, an aggregate amount in excess of 50 per centum of its paid-in and unimpaired capital and surplus (shares and undivided earnings, plus net income or minus net loss).

(b) A federally insured state-chartered credit union may apply to the regional director for a waiver of paragraph (a) of this section up to the amount permitted under the applicable state law or by the state regulator. The waiver request must include:

(1) Written approval from the state regulator;

(2) A detailed analysis of the safety and soundness implications of the proposed waiver;

(3) A proposed aggregate dollar amount or percentage of paid-in and

unimpaired capital and surplus limitation; and

(4) An explanation demonstrating the need to raise the limit.

(c) The regional director will approve the waiver request if the proposed borrowing limit will not adversely affect the safety and soundness of the federally insured state-chartered credit union.

[60 FR 58504, Nov. 28, 1995, as amended at 69 FR 8547, Feb. 25, 2004]

#### § 741.3 Criteria.

In determining the insurability of a credit union which makes application for insurance and in continuing the insurability of its accounts pursuant to title II of the Act, the following criteria shall be applied:

(a) *Reserves*—(1) *General rule.* State-chartered credit unions are subject to section 216 of the Act, 12 U.S.C. 1790d, and to part 702 and subpart L of part 747 of this chapter.

(2) *Special reserve for nonconforming investments.* State-chartered credit unions (except state-chartered corporate credit unions) are required to establish an additional special reserve for investments if those credit unions are permitted by their respective state laws to make investments beyond those authorized in the Act or the NCUA Rules and Regulations. For purposes of this paragraph, if a state-chartered credit union conducts and documents an analysis that reasonably concludes an investment is at least investment grade, as defined in § 703.2 of this chapter, and the investment is otherwise permissible for Federal credit unions, that investment is not considered to be beyond those authorized by the Act or the NCUA Rules and Regulations. For any investment other than loans to members and obligations or securities expressly authorized in title I of the Act and part 703 of this chapter, as amended, state-chartered credit unions (except state-chartered corporate credit unions) are required to establish and maintain at the end of each accounting period and prior to payment of any dividend, an Appropriation for Non-conforming Investments in an amount at least equal to the net excess of book value over current market value of the investments.

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If the market value cannot be determined, an amount equal to the full book value will be established. When at the end of any dividend period, the amount in the Appropriation for Non-conforming Investments exceeds the difference between book value and market value, the board of directors may authorize the transfer of the excess to Undivided Earnings.

(b) *Financial condition and policies.* The following factors are to be considered in determining whether the credit union's financial condition and policies are both safe and sound:

(1) The existence of unfavorable trends which may include excessive losses on loans (i.e., losses which exceed the regular reserve or its equivalent [in the case of state-chartered credit unions] plus other irrevocable reserves established as a contingency against losses on loans), the presence of special reserve accounts used specifically for charging off loan balances of deceased borrowers, and an expense ratio so high that the required transfers to reserves create a net operating loss for the period or that the net gain after these transfers is not sufficient to permit the payment of a nominal dividend;

(2) The existence of written lending policies, including adequate documentation of secured loans and the protection of security interests by recording, bond, insurance or other adequate means, adequate determination of the financial capacity of borrowers and co-makers for repayment of the loan, adequate determination of value of security on loans to ascertain that said security is adequate to repay the loan in the event of default, loan workout arrangements, and nonaccrual standards that include the discontinuance of interest accrual on loans past due by 90 days or more and requirements for returning such loans, including member business loans, to accrual status.

(3) Investment policies which are within the provisions of applicable law and regulations, i.e., the Act and part 703 of this chapter for federal credit unions and the laws of the state in which the credit union operates for state-chartered credit unions, except state-chartered corporate credit

unions. State-chartered corporate credit unions are permitted to make only those investments that are in conformance with part 704 of this chapter and applicable state laws and regulations;

(4) The presence of any account or security, the form of which has not been approved by the Board, except for accounts authorized by state law for state-chartered credit unions.

(5) The existence of a written interest rate risk policy ("IRR policy") and an effective interest rate risk management program ("effective IRR program") as part of asset liability management. Federally insured credit unions ("FICUs") with assets of more than \$50 million, as measured by the most recent Call Report filing, must adopt a written IRR policy and implement an effective IRR program. Appendix A to this part 741 provides guidance on how to develop an IRR policy and an effective IRR program. The guidance describes widely accepted best practices in the management of interest rate risk for the benefit of all FICUs.

(c) *Fitness of management.* The officers, directors, and committee members of the credit union must have conducted its operations in accordance with provisions of applicable law, regulations, its charter and bylaws. No person shall serve as a director, officer, committee member, or employee of an insured credit union who has been convicted of any criminal offense involving dishonesty or breach of trust, except with the written consent of the Board.

(d) *Insurance of member accounts would not otherwise involve undue risk to the NCUSIF.* The credit union must maintain adequate fidelity bond coverage as specified in §741.201. Any circumstances which may be unique to the particular credit union concerned shall also be considered in arriving at the determination of whether or not an undue risk to the NCUSIF is or may be present. For purposes of this section, the term "undue risk to the NCUSIF" is defined as a condition which creates a probability of loss in excess of that normally found in a credit union and

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which indicates a reasonably foreseeable probability of the credit union becoming insolvent because of such condition, with a resultant claim against the NCUSIF.

(e) *Powers and purposes.* The credit union must not perform services other than those which are consistent with the promotion of thrift and the creation of a source of credit for its members, except as otherwise permitted by law or regulation.

(f) *Letter of disapproval.* A credit union whose application for share insurance is disapproved shall receive a letter indicating the reasons for such disapproval, a citation of the authority for such disapproval, and suggested methods by which the applying credit union may correct its deficiencies and thereby qualify for share insurance.

(g) Nothing in this section shall preclude the NCUA Board from imposing additional terms or conditions pursuant to the insurance agreement.

[60 FR 58504, Nov. 28, 1995, as amended at 64 FR 41040, July 29, 1999; 65 FR 8593, Feb. 18, 2000; 67 FR 71094, Nov. 29, 2002; 77 FR 32001, May 31, 2012; 77 FR 5162, Feb. 2, 2012; 77 FR 74112, Dec. 13, 2012; 78 FR 4037, Jan. 18, 2013; 84 FR 1608, Feb. 5, 2019]

### § 741.4 Insurance premium and one percent deposit.

(a) *Scope.* This section implements the requirements of Section 202 of the Act (12 U.S.C. 1782) providing for capitalization of the NCUSIF through the maintenance of a deposit by each insured credit union in an amount equaling one percent of its insured shares and payment of an insurance premium.

(b) *Definitions.* For purposes of this section:

*Aggregate amount of insured shares* means the sum of all insured shares reported by federally insured credit unions in calendar year-end Call Reports from the calendar year for which the Board declares an NCUSIF equity distribution pursuant to paragraph (e) of this section.

*Aggregate average amount of insured shares* means the sum of the average amount of insured shares as then reported by all financial institutions eligible to receive an NCUSIF equity distribution under subparagraph (e)(1) of this section in quarterly Call Reports

over the calendar year for which the Board declares an NCUSIF equity distribution divided by the number of reporting periods in that calendar year.

*Available assets ratio* means the ratio of:

(i) The amount determined by subtracting—

(A) Direct liabilities of the NCUSIF and contingent liabilities for which no provision for losses has been made from

(B) The sum of cash and the market value of unencumbered investments authorized under §203 of the Federal Credit Union Act (12 U.S.C. 1783), to

(ii) The aggregate amount of insured shares in all federally insured credit unions.

*Average amount of insured shares* means the sum of insured shares as then reported by a financial institution eligible to receive an NCUSIF equity distribution under subparagraph (e)(1) of this section over the calendar year for which the Board declares an NCUSIF equity distribution divided by the number of reporting periods in that calendar year.

*Board* means the NCUA Board or any individual or group of individuals with the delegated authority to act on behalf of the Board to implement the requirements of this section.

*Equity ratio* means the ratio of:

(i) The amount determined by subtracting—

(A) Direct liabilities of the NCUSIF and contingent liabilities for which no provision for losses has been made from

(B) The sum of all one percent deposits made by federally insured credit unions pursuant to paragraph (c) of this section and the retained earnings balance of the NCUSIF, to

(ii) The aggregate amount of insured shares in all federally insured credit unions.

*Federally insured credit union* means a federal or state-chartered credit union that maintains federal share insurance coverage from the NCUSIF.

*Financial institution* means a federally insured credit union, non-federally insured credit union, or an insured depository institution, including a liquidation or receivership estate of any such credit union or depository institution.