delinquent loans, for the most recent month-end and each of the twelve months preceding that month-end.

* * * * *

§ 705.7 [Amended]

6. Section 705.7 is amended in paragraph (a) by adding ''in the aggregate'' after the number ''$300,000''.

7. Section 705.10 is revised to read as follows:

§ 705.10 Technical assistance.

Based on available earnings, NCUA may contract with outside providers to render technical assistance to participating credit unions. Participating credit unions can be provided with technical assistance without obtaining a Program loan. NCUA technical assistance will aid participating credit unions in providing services to their members and in the efficient operation of such credit unions.

[FR Doc. 96–24458 Filed 9–26–96; 8:45 am]

BILLING CODE 7535–01–P

12 CFR Parts 701, 709 and 741

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The final rule allows credit unions serving predominantly low-income members (LICU) to raise secondary capital from foundations and other philanthropic-minded institutional investors. The rule will enable LICUs to make more loans and improve other financial services for the groups and communities they serve. The rule also allows federal- and state-chartered LICUs to offer secondary capital accounts and incorporates the existing regulatory provisions concerning the designation of low-income status. The rule also amends NCUA's regulations so that secondary capital accounts are last in payout priorities in the event of an involuntary liquidation.

EFFECTIVE DATE: September 27, 1996.

FOR FURTHER INFORMATION CONTACT: Joyce Jackson, Director, Office of Community Development Credit Unions, at 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone (703) 518–6610, or David Marquis, Director, or Stephen Austin, Acting Deputy Director, Office of Examination and Insurance, both at the above address or telephone (703) 518–6360, or Robert M. Fenner, General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 1996, the NCUA Board issued an interim final rule (''Interim Rule''), 61 FR 3788, that authorized LICUs to accept funds as secondary capital from nonnatural persons and philanthropic institutional investors. The Board issued the Interim Rule to achieve the following goals: to assist LICUs in achieving their purpose of serving members and communities in financial need; to ensure that any authorized secondary capital will actually function as capital and be available to absorb losses; to ensure that investors in secondary capital understand the nature of their investment and the risk they are undertaking; and to eliminate any potential risk to the NCUSIF and insured credit unions generally as a result of this activity.

Summary of Comments and Discussion of Issues

NCUA received six comment letters: three from state credit union leagues; two from national credit union trade associations; and one from an accounting trade group. The five credit union commenters expressed strong support for the Interim Rule with one commenter viewing the Interim Rule ''as the most important regulatory innovation of the last two decades in addressing the special needs of [LICUs].'' The accounting trade group neither supported nor opposed the Interim Rule.

Use of Secondary Capital To Replenish Operating Losses

Two commenters expressed support for the Interim Rule's provisions that required LICUs to use the secondary capital to cover the LICU's operating losses. However, both commenters disagreed with NCUA's decision to prohibit LICUs from replenishing the secondary capital when the LICU regained financial health. One of the commenters questioned NCUA's rationale and the other commenter asked the NCUA to reexamine its position. The latter commenter believed NCUA could establish safeguards so the replenishment of secondary capital would be subordinate to the LICU's other goals, such as reinstituting dividends and building capital. The commenter also believed NCUA's position unfairly penalized investors and decreased the secondary capital's attractiveness.

Permitting LICUs to replenish secondary capital accounts once financial health has been regained would defeat the purpose for establishing secondary capital. The goal of secondary capital is to enhance capital positions. The potential growth of primary capital could be slowed by allowing LICUs to replenish investor funds in the event those funds are depleted. Additionally, permitting replenishment could be interpreted as a ''guaranteed return of principal'' by the investor which was not the Board's original intent.

Secondary Capital as Equity

Two commenters objected to the Interim Rule's provisions that required LICUs to treat secondary capital as equity. Instead, the commenters believed that LICUs should treat secondary capital as debt according to GAAP. One commenter stated that classifying secondary capital as equity was misleading and recommended that NCUA require LICUs to exclude non-GAAP financial information from the LICU's financial statements. The commenter also strongly encouraged NCUA to follow the other federal financial regulators and conform all of NCUA's regulatory accounting practices to GAAP. The other commenter requested additional guidance from NCUA since many LICUs and auditing firms will not be familiar with the accounting issues associated with secondary capital.

The Board has considered the commenter's position, and acknowledges that while secondary capital accounts have characteristics of both debt and equity, in the final analysis, it believes secondary capital is more analogous to equity. Thus, for reporting purposes, LICUs should record secondary capital accounts consistent with Accounting Bulletin 96–1 (the ''Bulletin''), which establishes the accounting entries for secondary capital. The Bulletin requires secondary capital to be treated as part equity and part subordinated debt based on a sliding scale. The Board anticipates that most LICUs will not be seeking audit opinions on their financial statements nor posting GAAP statements for members or other third-party reliance. Most LICUs financial statement reporting efforts will be directed to meeting NCUA regulatory requirements and thus, our approach is not at odds with the other federal banking agencies since they, too, have preserved their option to adopt regulatory reporting requirements for supervisory purposes.

Sliding Scale

One commenter objected to the requirement that LICUs add a footnote to their financial statements reflecting the secondary capital's value as a percentage of its face value, on a five year sliding scale. The commenter suggested the footnote should state the secondary capital's total dollar amount and maturity date. According to the commenter, their proposed method would be consistent with GAAP and reflect the economic reality that all of the secondary capital would be available to absorb losses until maturity.

The Bulletin specifically provides for two separate accounts for recognizing secondary capital. The first, uninsured secondary capital (account #925) shows the amount of secondary capital having a maturity greater than 5 years. Subordinated CDCU Debt (account #867) recognizes the secondary capital accounts with maturities of less than 5 years. The rule establishes a sliding scale for the capital value of accounts with less than 5 years remaining maturity. The Board believes a footnote disclosure recognizing the secondary capital's total dollar amount and maturity date would be appropriate. As a result, the final rule directs LICUs to reflect the secondary capital's full amount in a footnote to its balance sheet, and reflect the secondary capital's capital value based on the sliding scale in the LICU's balance sheet.

Requiring Secondary Capital as a Condition of Charter or Letter of Understanding and Agreement

Finally, two commenters expressed concerns that the rule may result in tougher requirements for new or troubled LICUs. Both commenters believed that NCUA should not require a LICU to obtain secondary capital before the NCUA granted a charter or as a condition of a Letter of Understanding and Agreement. One commenter noted that the Interim Rule did not require LICUs to offer secondary capital and believed that NCUA should only direct a LICU to obtain secondary capital in rare instances.

The Board strongly believes secondary capital will help support greater lending and financial services for members of LICUs; however, it was never the Board's intention to require secondary capital as a condition for new LICUs. The decision to use secondary capital accounts is within the discretion of the LICU.

Final Rule

The final rule adopts with minor modifications the Interim Rule published on February 2, 1996. (61 FR 3788).

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that this rule will not have a significant impact on a substantial number of small credit unions. The rule affects only low-income designated credit unions, and imposes no mandatory regulatory burden on those credit unions. Rather, it increases flexibility by providing a new method of raising capital through secondary capital accounts. Accordingly, a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The collection of information requirements contained in the rule were approved by the Office of Management and Budget under OMB Control No. 3133–0140. Federally insured credit unions are not required, pursuant to the terms of the Paperwork Reduction Act, to comply with paperwork requirements until OMB approval and a OMB control number are received. However, NCUA expected LICUs that chose to offer secondary capital accounts, as a matter of safety and soundness, to adopt written plans, forward a copy of the LICU's plan to the Regional Director (and state supervisor in the case of state credit unions) and use account contract documents and disclosure forms that meet the requirements of this rule in every respect.

Written comments on the collection of information should be sent to the Office of Management and Budget, OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20503. Attn: Alexander Hunt. The collection of information requirements relating to the final rule are found at 12 CFR 701.34(b) (1) and (11). NCUA believes these requirements are essential both to ensure the safe and sound operation of a secondary capital program and to ensure that account holders fully understand the nature of their investment in the credit union and the risks involved. The likely recordkeepers are Federally-insured credit unions with a low-income designation.

Estimated number of respondents and/or recordkeepers: 50.

Estimated average annual burden hours per respondent/recordkeeper: 3 hours.

Estimated total annual reporting and recordkeeping burden: 150 hours.

Start-up costs to respondents: None.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effects of its actions on state interests. This rule has no adverse effects on state interests. The rule provides additional authority for federally insured state chartered credit unions, but only to the extent not inconsistent with state law and regulations. The NCUA Board, however, specifically requested the comments of State credit union regulators to obtain their guidance in how the rule may affect their credit unions. However, no State credit union regulator commented on the Interim Rule.

List of Subjects in 12 CFR Part 701

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on September 18, 1996.

Becky Baker,

Secretary of the Board.

Accordingly, the interim rule amending 12 CFR parts 701, 709, and 741, which was published at 61 FR 3788 on February 2, 1996, is adopted as a final rule with the following change:

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, 1789 and Public Law 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 12 U.S.C. 1601, et seq., 42 U.S.C. 1981 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.34 is amended by revising paragraphs (b)(2) and (c) to read as follows:

§ 701.34 Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions.

* * * * *

(b) * * *

(2) The secondary capital account must be established as a uninsured secondary capital account or other form of non-share account.

* * * * *

(c) *Accounting treatment; weighted value for purposes of recognizing capital value of secondary capital accounts.* (1) A low-income designated credit union that issues secondary capital accounts pursuant to paragraph (b) of this section shall record the funds on its balance sheet in an equity account entitled ''uninsured secondary capital

account.'' For such accounts with remaining maturities of less than five years, the credit union shall reflect the capital value of the accounts in its financial statement in accordance with the following scale:

(i) Four to less than five years remaining maturity—80 percent.

(ii) Three to less than four years remaining maturity—60 percent.

(iii) Two to less than three years remaining maturity—40 percent.

(iv) One to less than two years remaining maturity—20 percent.

(v) Less than one year remaining maturity—0 percent.

(2) The credit union will reflect the full amount of the secondary capital on deposit in a footnote to its financial statement.

* * * * *

[FR Doc. 96–24457 Filed 9–26–96; 8:45 am]

BILLING CODE 7535–01–P

12 CFR Part 711

Management Official Interlocks

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: NCUA is revising its rules regarding management interlocks between credit unions and other types of depository institutions. The final rule, like the current regulation, does not apply when a credit union shares a management official with another credit union. The final rule conforms the interlocks rules to recent statutory changes, modernizes and clarifies the rules, and reduces unnecessary regulatory burdens where feasible, consistent with statutory requirements.

EFFECTIVE DATE: September 27, 1996.

FOR FURTHER INFORMATION CONTACT: Jeffrey Mooney, Staff Attorney (703/518–6563), Office of General Counsel, or Kimberly Iverson, Program Officer (703/518–6375), Office of Examination and Insurance.

SUPPLEMENTARY INFORMATION:

Background

The Depository Institution Management Interlocks Act (12 U.S. C. 3201 *et seq.*) (Interlocks Act) prohibits certain management interlocks between depository institutions. The Interlocks Act exempts interlocking arrangements between two credit unions and therefore, in the case of credit unions, only restricts interlocks between credit unions and other depository institutions—banks and savings associations.

The Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act) amended the Interlocks Act by removing NCUA's broad authority to exempt otherwise impermissible interlocks and replacing it with the authority to exempt interlocks under more narrow circumstances. The CDRI Act also required a depository organization with a ''grandfathered'' interlock to apply for an extension of the grandfather period if the organization wanted to keep the interlock in place.

On March 25, 1996, the NCUA Board (Board) published a notice of proposed rulemaking (proposal) (61 FR 12043) to implement these statutory changes. In addition, the proposal permitted interlocks involving two institutions located in the same relevant metropolitan statistical area (RMSA) if the institutions were not also located in the same community and if at least one of the institutions had total assets of less than $20 million. Finally, the proposal streamlined and clarified NCUA's interlocks rules in various respects.

The Final Rule and Comments Received

NCUA received eight comment letters; four from state leagues, three from credit unions, and one from a national trade association. Seven of the eight commenters supported the proposal. The commenter that objected to the proposal thought the changes were unnecessary. A few commenters, while supporting the proposal, requested guidance or suggested changes as discussed later in this preamble. Most of the provisions in the proposal received either no comments or favorable comments. Accordingly, NCUA has adopted, with minor modifications, the changes to the interlocks rules that were set forth in the proposal.

Authority, Purpose, and Scope

This section in NCUA's final rule identifies the Interlocks Act as the statutory authority for the management interlocks regulation. It also states that the purpose of the rules governing management interlocks is to foster competition between unaffiliated institutions.

One commenter asked NCUA to include a statement that ''this part does not apply to interlocking arrangements between credit unions.'' Language to that effect is provided in section 711.1(c).

Definitions

Anticompetitive Effect

The final rule defines the term ''anticompetitive effect'' to mean ''a monopoly or substantial lessening of competition,'' a definition derived from the Bank Merger Act (12 U.S.C. 1828(c)). The term ''anticompetitive effect'' is used in the Regulatory Standards exemption. Under the Regulatory Standards exemption, NCUA may approve a request for an exemption to the Interlocks Act if, among other things, the agency finds that continuation of service by the management official does not produce an anticompetitive effect with respect to the affected institution.

The statute does not define the term ''anticompetitive effect,'' nor does the legislative history to the CDRI Act point to a particular definition. The context of the Regulatory Standards exemption suggests that NCUA should apply the term ''anticompetitive effect'' in a manner that permits interlocks that present no substantial lessening of competition. By prohibiting an interlock that would result in a monopoly or substantial lessening of competition, the definition preserves the free flow of credit and other financial services that the Interlocks Act is designed to protect.

Since the term anticompetitive effect is not used by the credit union industry, NCUA requested comments on whether another definition would be more appropriate. One commenter suggested that NCUA define monopoly and substantial lessening of competition by using percentages. The Board believes a percentage system would be arbitrary and has not made the suggested change.

Two commenters asked NCUA to clarify what the agency would consider an anticompetitive effect. The Board anticipates that it will make this determination on a case-by-case basis. Nevertheless, NCUA will follow Justice Department guidelines and precedents established by the financial institution regulators where appropriate.[1]

Area Median Income

The final rule defines ''area median income'' as the median family income for the metropolitan statistical area (MSA) in which an institution is located or the statewide nonmetropolitan median family income if an institution is located outside an MSA. The term ''area median income'' is used in the definition of ''low- and moderate-income areas,'' which in turn is used in

[1] *See e.g.*, the Office of the Comptroller of the Currency's (OCC) Bank Merger Competitive Analysis Screen (OCC Advisory Letter 95–4, July 18, 1995); Department of Justice Merger Guidelines (49 FR 26823, June 29, 1984) (applied by the Federal Reserve Board (FRB)); and Federal Deposit Insurance Corporation (FDIC) Statement of Policy: Bank Merger Transactions (54 FR 39045, Sept. 22, 1989).