

National Credit Union Administration

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receive reasonable compensation for so acting, under any written trust instrument or custodial agreement created or organized in the United States and forming part of a tax-advantaged savings plan which qualifies or qualified for specific tax treatment under sections 223, 401(d), 408, 408A and 530 of the Internal Revenue Code (26 U.S.C. 223, 401(d), 408, 408A and 530), for its members or groups of its members, provided the funds of such plans are invested in share accounts or share certificate accounts of the Federal credit union. Federal credit unions located in a territory, including the trust territories, or a possession of the United States, or the Commonwealth of Puerto Rico, are also authorized to act as trustee or custodian for such plans, if authorized under sections 223, 401(d), 408, 408A and 530 of the Internal Revenue Code as applied to the territory or possession under similar provisions of territorial law. All funds held in a trustee or custodial capacity must be maintained in accordance with applicable laws and rules and regulations as may be promulgated by the Secretary of Labor, the Secretary of the Treasury, or any other authority exercising jurisdiction over such trust or custodial accounts. The federal credit union shall maintain individual records for each participant which show in detail all transactions relating to the funds of each participant or beneficiary.

[55 FR 30211, July 25, 1990, as amended at 63 FR 14026, Mar. 24, 1998; 65 FR 10934, Mar. 1, 2000; 69 FR 45238, July 29, 2004]

§ 724.2 Self-directed plans.

A federal credit union may facilitate transfers of plan funds to assets other than share and share certificates of the credit union, provided the conditions of § 724.1 are met and the following additional conditions are met:

(a) All contributions of funds are initially made to a share or share certificate account in the Federal credit union;

(b) Any subsequent transfer of funds to other assets is solely at the direction of the member and the Federal credit union exercises no investment discretion and provides no investment advice with respect to plan assets (i.e.,

the credit union performs only custodial duties); and

(c) The member is clearly notified of the fact that National Credit Union Share Insurance Fund coverage is limited to funds held in share or share certificate accounts of NCUSIF-insured credit unions.

[55 FR 30211, July 25, 1990, as amended at 69 FR 45239, July 29, 2004]

§ 724.3 Appointment of successor trustee or custodian.

Any plan operated pursuant to this part shall provide for the appointment of a successor trustee or custodian by a person, committee, corporation or organization other than the Federal credit union or any person acting in his capacity as a director, employee or agent of the Federal credit union upon notice from the Federal credit union or the Board that the Federal credit union is unwilling or unable to continue to act as trustee or custodian.

PART 725—NATIONAL CREDIT UNION ADMINISTRATION CENTRAL LIQUIDITY FACILITY

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AUTHORITY: Secs. 301–307 Federal Credit Union Act, 92 Stat. 3719–3722 (12 U.S.C. 1795–1795f).

SOURCE: 44 FR 49437, Aug. 23, 1979, unless otherwise noted.

§ 725.1 Scope.

This part contains the regulations implementing the National Credit Union Central Liquidity Facility Act, subchapter III of the Federal Credit

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Union Act. The National Credit Union Administration Central Liquidity Facility is a mixed-ownership Government corporation within the National Credit Union Administration. It is managed by the National Credit Union Administration Board and is owned by its member credit unions. The purpose of the Facility is to improve the general financial stability of credit unions by meeting their liquidity needs and thereby encourage savings, support consumer and mortgage lending and provide basic financial resources to all segments of the economy.

§ 725.2 Definitions.

As used in this part:

(a) *Agent* means an Agent member of the Facility.

(b) *Agent group* means an Agent member of the Facility consisting of a group of central credit unions, one of which is designated as the group's *Agent group representative* and authorized to transact business with the Facility on behalf of the group or any member of the group.

(c) *Agent loan* means an advance of funds by an Agent to a member natural person credit union to meet liquidity needs which have been the basis for a Facility advance.

(d) *Central credit union* means a Federal or state-chartered credit union primarily serving other credit unions. A credit union is primarily serving other credit unions when the total dollar amount of the shares and deposits received from other credit unions plus loans to other credit unions exceeds 50 percent of the total dollar amount of all shares and deposits plus loans during the qualifying period, as defined in paragraph (o) of this section.

(e) *Facility* or *Central Liquidity Facility* means the National Credit Union Administration Central Liquidity Facility.

(f) *Facility advance* means an advance of funds by the Facility to a Regular or Agent member.

(g) *Facility lending officer* means any employee of the Facility or the National Credit Union Administration who has been designated by the NCUA Board as a Facility lending officer.

(h) *Liquid assets* means the following unpledged assets:

(1) Cash on hand;

(2) Share or deposit accounts with remaining maturities of one year or less maintained in central credit unions or institutions insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation;

(3) Investments in obligations of the United States or any agency thereof, or securities fully guaranteed as to principal and interest thereby, which are authorized under 12 U.S.C. 1757(7) and which have a remaining maturity of one year or less;

(4) Common trust investments and similar investments in funds or securities authorized for Federal credit unions, the objectives of which are to provide daily liquidity for participating credit unions;

(5) Shares in the National Credit Union Administration Central Liquidity Facility or in special share accounts authorized by § 725.7 of this part;

(6) In the case of a federally-insured state-chartered credit union, any asset held in satisfaction of liquidity requirements imposed by applicable state law or regulation; and

(7) Balances maintained by federally-insured credit unions in a Federal Reserve bank, or in a pass-through account to a Federal Reserve bank, pursuant to the requirements of section 19(b) of the Federal Reserve Act (12 U.S.C. 461(b)).

(i) *Liquidity needs* means the needs of credit unions primarily serving natural persons for:

(1) Short-term adjustment credit available to assist in meeting temporary requirements for funds or to cushion more persistent outflows of funds pending an orderly adjustment of credit union assets and liabilities;

(2) Seasonal credit available for longer periods to assist in meeting seasonal needs for funds arising from a combination of expected patterns of movement in share and deposit accounts and loans; and

(3) Protracted adjustment credit available in the event of unusual or emergency circumstances of a longer term nature resulting from national, regional or local difficulties.

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(j) *Management policies* means policies of a credit union with respect to membership, shares, deposits, dividends, interest rates, lending, investing, borrowing, safeguarding of assets, hiring, training and supervision of employees, and general operating and control practices and procedures.

(k) *Member* means a Regular or Agent member of the Facility, unless the context indicates otherwise.

(l) *Member natural person credit union* means a natural person credit union which is a member of an Agent or of any central credit union in an Agent group. Member natural person credit unions are not members of the Facility unless they are also Regular members of the Facility.

(m) *Natural person credit union* means a Federal or state-chartered credit union primarily serving natural persons. A credit union is primarily serving natural persons if it is not a central credit union as defined in paragraph (d) of this section.

(n) *NCUA Board* or *Board* means the National Credit Union Administration Board.

(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.

(p) *Qualifying Period* means:

(1) For initial qualification, any 7 months out of the 12 months immediately preceding the month in which application is made to become a member of the Facility; and

(2) For qualification during each subsequent calendar year, any 7 months out of the previous calendar year.

(q) *Stock subscription* means the stock subscription required for membership in the Facility. "Total subscribed Facility stock" is the sum of all members' stock subscriptions.

[44 FR 49437, Aug. 23, 1979, as amended at 53 FR 22472, June 16, 1988; 66 FR 65624, Dec. 20, 2001]

§ 725.3 Regular membership.

(a) A natural person credit union may become a Regular member of the Facility by:

(1) Making application on a form approved by the Facility;

(2) Subscribing to capital stock of the Facility in an amount equal to one-half of 1 percent of the credit union's paid-in and unimpaired capital and surplus, as determined in accordance with § 725.5(b) of this part, and forwarding with its completed application funds equal to one-half of this stock subscription;¹ and

(3) Furnishing the following reports and documents with the completed membership application:

(i) A copy of the credit union's financial and statistical report for the most recent calendar month; and

(ii) Copies of the credit union's charter and bylaws, unless the credit union is federally chartered.

(b) A credit union which becomes a Regular member of the Facility after February 23, 1980, may not receive Facility advances without approval of the NCUA Board for a period of six months after becoming a member. This subsection shall not apply to any credit union which becomes a Regular member of the Facility within six months after such credit union is chartered, or which has had access to Facility funds through an Agent member of the Facility at any time within six months prior to becoming a Regular member of the Facility.

[44 FR 49437, Aug. 23, 1979, as amended at 47 FR 1371, Jan. 13, 1982]

§ 725.4 Agent membership.

(a) A central credit union or a group of central credit unions may become an Agent member of the Facility by (in the case of a group of central credit unions, each central credit union in the group must do each of the following except for paragraph (a)(2) of this section, which shall be done by the Agent group representative):

(1) Making application on a form approved by the Facility;

(2) Subscribing to the capital stock of the Facility in an amount equal to one-half of 1 percent of the paid-in and

¹ A credit union which submits its application for membership prior to October 1, 1979, is not required to forward these funds to the Facility until October 1, 1979.

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unimpaired capital and surplus (as determined in accordance with § 725.5(b) of this part) of all the central credit union's or central credit union group's member natural person credit unions, except those which are Regular members of the Facility or which have access to the Facility through, and are included in the stock subscription of, another Agent.² Upon approval of the application, the Agent shall forward funds equal to one-half of this initial stock subscription to the Facility.³

(3) Furnishing the following reports and documents with the completed membership application:

(i) A copy of the central credit union's financial and statistical report for the most recent calendar month;

(ii) Copies of the central credit union's charter and bylaws, unless such credit union is federally chartered; and

(iii) A list of all the central credit union's member natural person credit unions.

(4) Agreeing to submit to the supervision of the NCUA Board and to comply with all regulations and reporting requirements which the NCUA Board shall prescribe for Agent members;

(5) Agreeing to submit to periodic unrestricted examinations by the NCUA Board or its designee; and

(6) Obtaining the written approval of the NCUA Board.

(b) The NCUA Board may approve a central credit union or group of central credit unions as an Agent member of the Facility, provided the NCUA Board is satisfied that such credit union or credit union group meets certain criteria, including but not limited to the following (in the case of a group of central credit unions, each central credit union in the group must meet these criteria):

²A natural person credit union which is a member of more than one Agent member of the Facility must designate through which Agent it will deal with the Facility, and the designated Agent will be responsible for including the capital and surplus of such credit union in the calculation of its stock subscription.

³If the application is approved prior to October 1, 1979, these funds are not required to be forwarded to the Facility until October 1, 1979.

(1) The management policies are in writing, approved by the central credit union's board of directors, and reviewed annually by such board;

(2) Adequate internal controls are in place to assure accurate and timely reporting of transactions and the safeguarding of assets;

(3) The financial condition of the central credit union is sound with adequate reserves for losses;

(4) Surety bond coverage provides protection for the central credit union while the central credit union is performing the duties of an Agent member of Facility;

(5) Management has demonstrated its ability to use such techniques as cash flow analysis, budgeting, and projections of sources and uses of funds to manage the affairs of the central credit union efficiently and in conformity with sound business practices; and

(6) There are no practices, procedures, policies, or other factors that would result in discrimination by the central credit union among natural person credit unions or inhibit its ability to act independently in its role as an Agent member of the Facility.

(c) Each Agent, or in the case of an Agent group, each central credit union in the group, must:

(1) Maintain records related to Facility activity in conformity with requirements prescribed by the NCUA Board from time to time; and

(2) Submit such reports as may be required by the Facility to determine financial soundness, quality and level of service, and conformity with established guidelines and procedures.

(d) Each Agent, or in the case of an Agent group, each central credit union in the group, must have on an annual basis a third party independent audit of its books and records and provide the Facility with copies of the report of such audit. The auditor selected must be recognized by a State or territorial licensing authority as possessing the requisite knowledge and experience to perform audits.

(e) Within 30 days after a natural person credit union becomes a member of a central credit union which is an Agent or a member of an Agent group, the agent, or in the case of an Agent group, the Agent group representative,

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shall subscribe to additional capital stock of the Facility in an amount equal to one-half of 1 percent of such credit union's paid-in and unimpaired capital and surplus, and shall forward funds equal to one-half of this stock subscription to the Facility. This subsection shall not apply if the natural person credit union is a Regular member of the Facility or has access to the Facility through, and is included in the stock subscription of, another Agent.

(f) A central credit union or group of central credit unions which becomes an Agent member of the Facility after February 23, 1980, may not receive a Facility advance without approval of the NCUA Board for a period of six months after becoming a member. This subsection shall not apply to any credit union which becomes an Agent member or a member of an Agent group within six months after such credit union is chartered within six months after such credit union has been an Agent or a member of another Agent group.

(g) Agent members will be compensated for the services they perform for the Facility in a manner to be specified by the NCUA Board.

§ 725.5 Capital stock.

(a) The capital stock of the Facility is divided into nonvoting shares having a par value of \$50 each. The Facility issues whole and fractional shares. Shares are issued in book entry form upon receipt of payment for such shares, and cannot be transferred or hypothecated except to the Facility.

(b) The capital stock subscriptions provided for in §§ 725.3 and 725.4 shall be:

(1) Based on an arithmetic average of paid-in and unimpaired capital and surplus over the six months preceding application for membership, and

(2) Adjusted at the close of each calendar year in accordance with an arithmetic average of paid-in and unimpaired capital and surplus over the twelve months in such calendar year. Payments for adjustments to the capital stock subscription must be received by the Facility no later than March 31 of the following year.

(c) That part of a member's stock subscription which is not paid-in shall

be held by the member on call of the NCUA Board and shall be invested in liquid assets.

(d) Any member may at any time purchase additional shares of capital stock in the Facility. Any shares in excess of the member's required paid-in portion of its stock subscription can be redeemed by the member as long as the member maintains investments in other assets sufficient to meet the requirement of paragraph (c) of this section. The member's required paid-in portion of its stock subscription includes one-half of its stock subscription plus any "calls" that may have been issued by the NCUA Board against the "on-call" portion of such stock subscription.

(e) Dividends will be paid on capital stock at such times and rates as are determined by the NCUA Board. The NCUA Board shall declare such dividends no less frequently than annually. All issued (paid for) capital stock shall share in dividend distributions without preference. Payment of dividends will be made by the issuance of capital stock to the member in the amount of the dividend.

[44 FR 49437, Aug. 23, 1979, as amended at 45 FR 47122, July 14, 1980; 47 FR 1371, Jan. 13, 1982; 53 FR 22472, June 16, 1988]

§ 725.6 Termination of membership.

(a) A member of the Facility whose stock subscription constitutes less than 5 percent of total subscribed Facility stock may withdraw from membership in the Facility six months after notifying the NCUA Board in writing of its intention to do so.

(b) A member of the Facility whose stock subscription constitutes 5 percent or more of total subscribed Facility stock may withdraw from membership in the Facility twenty-four months after notifying the NCUA Board in writing of its intention to do so.

(c) The NCUA Board may terminate membership in the Facility if, after the opportunity for a hearing, the NCUA Board determines the member has failed to comply with any provision of the National Credit Union Central Liquidity Facility Act or any regulation issued pursuant thereto. If membership is terminated under this subsection,

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the credit union will be required to obtain the approval of the NCUA Board before becoming a member of the Facility again. Such approval will be granted only if the NCUA Board is satisfied that the credit union will comply with such Act and regulations.

(d)(1) If membership is terminated under any provision of this section, the terminated member's stock shall be redeemed upon termination. In such event, the Facility may retain any amount owed to the Facility by the member.

(2) When a member natural person credit union withdraws from membership in a central credit union which is an Agent or a member of an Agent group, the stock subscription of the Agent, or in the case of an Agent group, the stock subscription of the Agent group representative, will be adjusted after the waiting period which would apply under paragraph (a) or (b) of this section if the withdrawing credit union were a member of the Facility.

§ 725.7 Special share accounts in federally chartered agent members.

(a) A federally chartered Agent member of the Facility may require its member natural person credit unions to establish and maintain special share accounts in the Agent member to reimburse it for the portion of the Agent's Facility stock subscription which is attributable to the paid-in and unimpaired capital and surplus of each such natural person credit union.

(b) The amount which the Agent member requires each member natural person credit union to maintain in such special share accounts shall be based on a uniform percentage of the paid-in and unimpaired capital and surplus of such credit unions, and shall not exceed the amount of the Agent's stock subscription which is attributable to the capital and surplus of each such credit union. An Agent shall not permit a member to maintain in a special share account any amounts in excess of the required amount.

(c) A natural person credit union that withdraws from membership in an Agent member or that becomes a Regular member of the Facility, shall be entitled to the return of all amounts in its special share account upon with-

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drawal from membership in the Agent or upon becoming a Regular member, as applicable.

[45 FR 47122, July 14, 1980]

§§ 725.8-725.16 [Reserved]

§ 725.17 Applications for extensions of credit.

(a) A Regular member may apply for a Facility advance to meet its liquidity needs by filing an application on a Facility-approved form, or by any other method approved by the Facility.

(b)(1) An Agent member may apply for a Facility advance by filing an application on a Facility-approved form, or by any other method approved by the Facility.⁴

(2) The Agent's application shall be based on the following:

(i) Approved applications to the Agent by its member natural person credit unions for pending loans to meet liquidity needs; or

(ii) Outstanding loans previously made by the Agent to meet liquidity needs of its member natural person credit unions; or

(iii) Such other demonstrable liquidity needs as the NCUA Board may specify.

(3) An Agent shall not submit an application to the Facility based on the liquidity needs of any member natural person credit union which has not agreed to the repayment, security and credit reporting terms prescribed by the Facility for Agent loans;

(4) Any loan to meet liquidity needs which have been or will be the basis for an application by the Agent for a Facility advance must be applied for on an application form approved by the Facility.

(5) Unless approved by the Facility, an Agent shall not submit an application to the Facility based on the liquidity needs of any credit union which became a member natural person credit union of the Agent after February 2, 1980, unless such credit union has been a member natural person credit union

⁴If the Agent is an Agent group, the application must be filed by the Agent group representative, and any Facility advance will be made to the Agent group representative.

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of the Agent for six months, was chartered within six months before becoming a member natural person credit union of the Agent, or had access to the Facility either as a Regular member or through another Agent within six months before becoming a member natural person credit union of the Agent.

(c) In emergency circumstances, the applications for extensions of credit required under paragraph (a) and paragraphs (b)(1) and (b)(4) of this section may be verbal, but must be confirmed within five working days by an application as required by such subsection or paragraphs.

(d) Applications of Regular and Agent members shall be filed with a Facility lending officer. Each application for credit which is completed and properly filed will be approved or denied within five working days after the day of receipt.

[44 FR 49437, Aug. 23, 1979, as amended at 47 FR 1371, Jan. 13, 1982]

§ 725.18 Creditworthiness.

(a) Prior to Facility approval of each application of a Regular member for a Facility advance, the Facility shall consider the creditworthiness of such member.

(b) Prior to an Agent's approval of each application of a member natural person credit union for an extension of credit on which an application by the Agent to the Facility will be based, an Agent shall consider the creditworthiness of such member natural person credit union.

(c) Specific characteristics of an uncreditworthy credit union include, but are not limited to, insolvency as defined by § 700.2(e)(1) of this chapter, unsatisfactory practices in extending credit, lower than desirable reserve levels, high expense ratio, failure to repay previous Facility advances as agreed, excessive dependence on borrowed funds, inadequate cash management policies and planning, or any other relevant characteristics creating a less than satisfactory condition. The presence of one or more of these characteristics will not necessarily mean that a credit union will be considered uncreditworthy.

(d) A natural person credit union (whether a Regular member of the Facility or a member natural person credit union) which does not meet the Facility's creditworthiness standards may be limited in or denied the use of advances for its liquidity needs.

[44 FR 49437, Aug. 23, 1979, as amended at 69 FR 27829, May 17, 2004]

§ 725.19 Collateral requirements.

(a) Each Facility advance and each Agent loan shall be secured by a first priority security interest in collateral of the credit union with a net book value at least equal to 110% of all amounts due under the applicable Facility advance or Agent loan, or by guarantee of the National Credit Union Share Insurance Fund.

(b) The Facility may accept as collateral for each Facility advance to a Regular member, a security interest in all assets of the Regular member; provided however, that the value of any assets in which any third party has a perfected security interest that is superior to the security interest of the Facility shall be excluded for purposes of complying with the requirements of paragraph (a) of this section.

(c) The Facility may accept as collateral for each Facility advance to an Agent member, a security interest in the Agent loans for which the Facility advance was made; provided however, that the collateral for such Agent loan meets the requirements of paragraph (a) of this section.

[62 FR 67550, Dec. 29, 1997]

§ 725.20 Repayment, security and credit reporting agreements; other terms and conditions.

(a) Regular and Agent members, or in the case of an Agent group, the Agent group representative, shall sign the repayment, security and credit reporting agreements prescribed by the Facility, and all Facility advances to Regular and Agent members shall be governed by the terms and conditions of such agreements.

(b) All Agent loans shall be made subject to the repayment, security and credit reporting terms prescribed by the Facility for Agent loans.

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(c) Other terms and conditions applicable to Facility advances and Agent loans will be specified in confirmations of credit provided in connection with such advances and loans, and/or in operating circulars of the Facility.

§ 725.21 Modification of agreements.

The repayment, security, and credit reporting terms under which Facility advances and Agent loans will be made, as provided in § 725.20 of this part, shall be subject to modification from time to time as the NCUA Board may determine. Any change in such terms shall be published in the FEDERAL REGISTER and shall apply to all advances disbursed by the Facility after the effective date of the change.

§ 725.22 Advances to insurance organizations.

(a) In accordance with policies established by the NCUA Board, the Facility may advance funds to a State credit union share or deposit insurance corporation, guaranty credit union, guaranty association, or similar organization. Requests for such advances shall be supported by an application which sets forth and supports the need for the advance.

(b) Advances under paragraph (a) shall be subject to the approval of the NCUA Board and shall be made subject to the following terms:

- (1) The advance shall be fully secured.
- (2) The maturity of the advance shall not exceed 12 months.
- (3) The advance shall not be renewable at maturity, and
- (4) The funds advanced shall not be relent at an interest rate exceeding that imposed by the Facility.

§ 725.23 Other advances.

(a) The NCUA Board may authorize extensions of credit to members of the Facility for purposes other than liquidity needs if the NCUA Board, the Board of Governors of the Federal Reserve System, and the Secretary of the Treasury concur in a determination that such extensions of credit are in the national economic interest.

(b) Extensions of credit approved under the conditions of paragraph (a) of this section shall be subject to such

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terms and conditions as shall be established by the NCUA Board.

PART 740—ACCURACY OF ADVERTISING AND NOTICE OF INSURED STATUS

Sec.

740.0 Scope.

740.1 Definitions.

740.2 Accuracy of advertising.

740.3 Advertising of excess insurance.

740.4 Requirements for the official sign.

740.5 Requirements for the official advertising statement.

AUTHORITY: 12 U.S.C. 1766, 12 U.S.C. 1781, 12 U.S.C. 1789.

SOURCE: 68 FR 23382, May 2, 2003, unless otherwise noted.

§ 740.0 Scope.

This part applies to all federally insured credit unions. It prescribes the requirements for the official sign insured credit unions must display and the requirements with regard to the official advertising statement insured credit unions must include in their advertisements. It requires that all other kinds of advertisements be accurate. It also establishes requirements for advertisements of excess insurance.

§ 740.1 Definitions.

(a) *Account* or *accounts* as used in this part means share, share certificate or share draft accounts (or their equivalent under state law, as determined by the Board in the case of insured state credit unions) of a member (which includes other credit unions, public units, and nonmembers where permitted under the Act) in a credit union of a type approved by the Board which evidences money or its equivalent received or held by a credit union in the usual course of business and for which it has given or is obligated to give credit to the account of the member.

(b) *Insured credit union* as used in this part means a credit union insured by the National Credit Union Administration (NCUA).

§ 740.2 Accuracy of advertising.

No insured credit union may use any advertising (which includes print, electronic, or broadcast media, displays