

and payment records for employment income.

Paragraph 34(b) Prohibited acts or practices for dwelling-secured loans; open-end credit.

1. *Amount of credit extended.* Where a loan is documented as open-end credit but the features and terms or other circumstances demonstrate that it does not meet the definition of open-end credit, the loan is subject to the rules for closed-end credit, including § 226.32 if the rate or fee trigger is met. In applying the triggers under § 226.32, the “amount financed,” including the “principal loan amount” must be determined. In making the determination, the amount of credit that would have been extended if the loan had been documented as a closed-end loan is a factual determination to be made in each case. Factors to be considered include the amount of money the consumer originally requested, the amount of the first advance or the highest outstanding balance, or the amount of the credit line. The full amount of the credit line is considered only to the extent that it is reasonable to expect that the consumer might use the full amount of credit.

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Appendix H—Closed-End Model Forms and Clauses

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20. *Sample H-16.* This sample illustrates the disclosures required under § 226.32(c). The sample illustrates the amount borrowed and the disclosures about optional insurance that are required for mortgage refinancings under § 226.32(c)(5). Creditors may, at their option, include these disclosures for all loans subject to § 226.32. The sample also includes disclosures required under § 226.32(c)(3) when the legal obligation includes a balloon payment.

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By order of the Board of Governors of the Federal Reserve System, December 14, 2001.

Jennifer J. Johnson,
Secretary of the Board.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700, 701, 712, 715, 723, 725, and 790

Definitions; Organization and Operation of Federal Credit Unions; Credit Union Service Corporations; Supervisory Committee Audits and Verifications; Member Business Loans; Central Liquidity Facility; Description of NCUA

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is issuing a final rule to amend various rules to make technical corrections and add and revise certain definitions. The Board is adding a scope section and definitions of “paid-in and unimpaired capital and surplus” and “unimpaired capital and surplus” to its rule containing definitions. The Board also is removing obsolete references from this rule and updating the rule concerning changes in officials of newly chartered or troubled credit unions. The Board is correcting a citation in the supervisory committee rule and making clarifications to the credit union service organization (CUSO) rule and the member business loan rule. In addition, the Board is updating and clarifying the definition for “paid-in and unimpaired capital and surplus” in the Central Liquidity Facility (CLF) rule. Finally, the Board is changing a reference in Part 790 from the “Office of Community Development Credit Unions” to the “Office of Credit Union Development.”

DATES: This rule is effective January 22, 2002.

FOR FURTHER INFORMATION CONTACT: Regina Metz, Staff Attorney, Division of Operations, Office of General Counsel, at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, or telephone: (703) 518-6561; or Herbert S. Yolles, Deputy Director, Office of Examination and Insurance, at the same address or telephone: (703) 518-6360.

SUPPLEMENTARY INFORMATION:

Background

On June 21, 2001, NCUA issued a proposed rule on definitions and technical corrections. 66 FR 33211, June 21, 2001. The proposed rule resulted from NCUA’s policy of continually reviewing its regulations to “update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.” Interpretive Rulings and Policy Statement (IRPS) 87-

2, Developing and Reviewing Government Regulations. The NCUA Board is issuing the final rule unchanged from the proposed rule.

The proposed rule replaced obsolete references in two parts of NCUA’s regulations related with new references to prompt corrective action, section 216 of the Federal Credit Union Act. 12 CFR 700.1, 701.14. In the definitions part of the regulations, the proposed rule added a scope section and definitions for “paid-in and unimpaired capital and surplus” and “unimpaired capital and surplus.” 12 CFR part 700. The proposed rule conformed definitions of paid-in and unimpaired capital and surplus in the CUSO and CLF rules to the proposed definitions in the definitions part. 12 CFR 712.2(d); 12 CFR 725.2(o). The proposed rule also corrected a citation in the supervisory committee audit rule and clarified the member business loan rule by changing a reference from “federally insured credit unions” to “federally insured state-chartered credit unions.” 12 CFR 715.2(l), 723.4. The proposed rule also updated NCUA’s regulations by changing a reference in Part 790 from the “Office of Community Development Credit Unions” to the office’s new name, the “Office of Credit Union Development.” The NCUA Board is adopting all the proposed changes in the final rule.

Summary of Comments

The NCUA Board requested comment on all aspects of the proposed rule and received three comment letters: One from a national trade association, one from a state trade association, and one from a federal credit union (FCU). The two trade associations supported the proposal without qualification. The FCU offered a substantive comment regarding the definition of “paid-in and unimpaired capital and surplus,” discussed below. NCUA received no comment on the other provisions in the proposed rule. This preamble does not repeat discussions from the proposal for those provisions and the NCUA Board has adopted them as proposed.

“Paid-in and Unimpaired Capital and Surplus” and “Unimpaired Capital and Surplus”

To improve the clarity of NCUA’s regulations, the Board proposed to include definitions for “paid-in and unimpaired capital and surplus” and “unimpaired capital and surplus” in the general definitions part of the regulations. The proposed rule defined “unimpaired capital and surplus” as meaning the same as “paid-in and unimpaired capital and surplus” and

cross-referenced its definition. The proposed definition for "paid-in and unimpaired capital and surplus" was a refined statement of the definitions currently in the FCU Bylaws, but did not change the meaning of those definitions or the agency's long-standing interpretation.

The proposed definition for paid-in and unimpaired capital and surplus was shares plus post-closing, undivided earnings. The preamble to the proposed rule stated that the term "post-closing" was simpler terminology that a credit union person, an examiner, and an accounting professional would understand to encompass the closing of the books and posting of all relevant and required period losses to undivided earnings. Post-closing undivided earnings incorporates and means the same as the language in the Bylaw provisions that define surplus ("after all losses have been provided for and net earnings or net losses have been added thereto or deducted therefrom") and define unimpaired capital ("less any losses that may have been incurred for which there is no reserve or which have not been charged against undivided earnings"). The proposed definition further clarified the meaning of paid-in and unimpaired capital and surplus by including the statement that: "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."

Amendment to Definition of "Paid-in and Unimpaired Capital and Surplus" in the CLF Rule

As stated in the proposed rule, the CLF is a mixed-ownership government corporation created to improve the general financial stability of credit unions by meeting their liquidity needs. 12 CFR 725.1. Both state-chartered and federally-chartered credit unions may become members. 12 CFR 725.3. The Board proposed to revise the current definition in the CLF rule for paid-in and unimpaired capital and surplus. The current CLF rule combines the definition for paid-in and unimpaired capital in the FCU Bylaws with the definition of surplus in the FCU Bylaws and is substantively identical to those provisions. 12 CFR 725.2(o). The current definition includes deposits because some state-chartered credit unions are authorized to accept deposits.

The proposed rule defined paid-in and unimpaired capital and surplus in the CLF rule as shares and deposits plus post-closing, undivided earnings. The proposed definition further stated that the term 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.

Comments on the Definitions of "Paid-in and Unimpaired Capital and Surplus"

One commenter expressed the view that the NCUA should simplify the general definition of "paid-in and unimpaired capital and surplus" to "shares and deposits plus unappropriated earnings," in order to include the concept of "unrealized gains or losses on investments" as part of "unappropriated earnings." The Board disagrees. The Board's view is that "unappropriated earnings" are equivalent to "undivided earnings," and neither term includes unrealized gains or losses on investments, since these amounts are not yet earned or realized. Thus, the final rule uses the term "undivided earnings."

Regarding the commenter's suggestion that the general definition include deposits, for the reasons stated in the proposed rule, only the CLF definition of "paid-in and unimpaired capital and surplus" includes deposits. The general definition does not include them in the final rule.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under one million dollars in assets). The final rule will not have a significant economic impact on a substantial number of small credit unions, and therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final 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 final 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 final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget concurred with NCUA's opinion that the final rule does not constitute a major rule, for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. NCUA requested comments on whether its proposed rule was understandable and minimally intrusive, but received no comments in response to this request.

List of Subjects

12 CFR Part 700

Credit unions, Definitions.

12 CFR Part 701

Credit unions.

12 CFR Part 712

Credit unions, Credit union service organizations.

12 CFR Part 715

Audits, Credit unions, Supervisory committees.

12 CFR Part 723

Credit, Credit unions.

12 CFR Part 725

Credit unions, Liquidity.

12 CFR Part 790

Credit unions.

By the National Credit Union Administration Board on December 13, 2001.
Becky Baker,
Secretary of the Board.

Accordingly, the NCUA amends 12 CFR parts 700, 701, 715, 723, 725, and 790 as follows:

PART 700—DEFINITIONS

1. The authority citation for part 700 continues to read as follows:

Authority: 12 U.S.C. 1752, 1757(6), 1766.

2. Redesignate current § 700.1 as § 700.2 and add a new § 700.1 to read as follows:

§ 700.1 Scope.

The definitions in § 700.2 apply to terms used in this chapter. Many additional definitions appear in the parts where the terms are used.

3. In newly redesignated § 700.2:

- A. Remove paragraphs (h) and (j);
- B. Redesignate paragraphs (e), (f), (g), and (i), as paragraphs (g), (h), (i), and (e) respectively; and
- C. Add new paragraphs (f) and (j), to read as follows:

§ 700.2 Definitions.

* * * * *

(f) *Paid-in and unimpaired capital and surplus* means shares 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. "Paid-in and unimpaired capital and surplus" for purposes of the Central Liquidity Facility is defined in § 725.2(o) of this chapter.

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(j) *Unimpaired capital and surplus* means the same as "paid-in and unimpaired capital and surplus," as defined in paragraph (f) of this section.

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PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

4. 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.

5. In § 701.14, revise paragraphs (b)(3)(ii) and (b)(4)(ii) to read as follows:

§ 701.14 Change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition.

* * * * *

(b) * * *

(3) * * *

(ii) Has been granted assistance as outlined under sections 208 or 216 of the Federal Credit Union Act.

(4) * * *

(ii) Has been granted assistance as outlined under sections 208 or 216 of the Federal Credit Union Act.

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PART 712—CREDIT UNION SERVICE ORGANIZATIONS (CUSOs)

6. The authority citation for part 712 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(d) and (7)(I), 1766, 1782, 1784, 1785, and 1786.

7. Amend § 712.2 by revising paragraph (d) to read as follows:

§ 712.2 How much can an FCU invest in or loan to CUSOs, and what parties may participate?

* * * * *

(d) *Measurement for calculating regulatory limitation.* For purposes of paragraphs (a) and (b) of this section:

(1) *Paid-in and unimpaired capital and surplus* means shares 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); and

(2) Total investments in and total loans to CUSOs will be measured consistent with GAAP.

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PART 715—SUPERVISORY COMMITTEE AUDITS AND VERIFICATIONS

8. Revise the authority citation for part 715 to read as follows:

Authority: 12 U.S.C. 1761(b), 1761d, 1782(a)(6).

9. Amend § 715.2(l) by revising the first sentence to read as follows:

§ 715.2 Definitions used in this part.

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(l) *Supervisory committee* refers to a supervisory committee as defined in Section 111(b) of the Federal Credit Union Act, 12 U.S.C. 1761(b). * * *

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PART 723—MEMBER BUSINESS LOANS

10. The authority citation for part 723 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

11. Amend § 723.4 by revising the second sentence to read as follows:

§ 723.4 What are the other applicable regulations?

* * * Except as required by part 741 of this chapter, federally insured state-chartered credit unions are not required to comply with the provisions of § 701.21(a) through (g) of this chapter.

PART 725—NATIONAL CREDIT UNION ADMINISTRATION CENTRAL LIQUIDITY FACILITY

12. The authority citation for part 725 continues to read as follows:

Authority: 12 U.S.C. 1795–1795f.

13. Amend § 725.2 by revising paragraph (o) to read as follows:

§ 725.2 Definitions.

* * * * *

(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.

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PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

14. The authority citation for part 790 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789, 1795f.

15. Amend § 790.2(b)(13) by revising the heading to read as follows:

§ 790.2 Central and regional office organization.

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(b) * * *

(13) Office of Credit Union Development. * * *

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