

**Attachment 4**

**THE OFFICE OF GENERAL COUNSEL'S  
2016 REGULATION REVIEW**

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711 Management Official Interlocks

Part 711 implements the Depository Institution Management Interlocks Act, which generally prohibits financial institution management officials from serving simultaneously with two unaffiliated depository institutions. NCUA last amended this rule in June 2010 to add additional clarifying language to §711.2(e). We received no comments requesting changes to Part 711 and are unaware of any problems that would suggest Part 711 should be further revised at this time.

712 Credit Union Service Organizations

Part 712 sets out the permissible forms of organization and activities for credit union service organizations (CUSO). The Part was last amended in November 2013. NCUA received two comments on Part 712 during this year's regulatory review cycle. One commenter suggested that NCUA amend Part 712 to include a specific reference to the CUSO Registry to make clear that the CUSO Registry is the means by which CUSOs report directly to NCUA. Another commenter suggested that NCUA amend Part 712 to permit majority-owned CUSOs, like wholly-owned CUSOs under the current rule, to file consolidated financial statements. For the reasons explained below, we do not recommend any revisions to Part 712 at this time.

First, amending Part 712 to specifically reference the CUSO Registry is unnecessary. The regulation makes it clear that there is a reporting and registration requirement for CUSOs. NCUA has provided detailed explanations regarding those requirements to credit unions through Letters to Credit Unions, press releases, and other information provided through NCUA's website. Other than receiving this one comment, we are unaware of any actual confusion or problems caused by the absence of the specific words "CUSO Registry" in the regulation.

Second, amending Part 712 to permit majority-owned CUSOs to file consolidated financial statements was already considered and rejected by the NCUA Board as part of the issuance of the 2013 CUSO final rule. Circumstances have not changed since then, nor has new relevant information been uncovered that would suggest such an approach is now warranted.

713 Fidelity Bond and Insurance Coverage for Federal Credit Unions

Part 713 articulates the requirements for fidelity bonds for federal credit union (FCU) employees and officials and for other insurance coverage for losses caused by persons outside the credit union. This is a substantive area in which we are seeing some changes in the marketplace. We are studying these changes to better understand their impact on credit unions. Although this is a topic of interest for the future, we do not recommend making any regulatory changes at this time.

714 Leasing

Part 714 sets forth the requirements for FCUs to engage in the lease financing of personal property to members. NCUA last amended this rule in November 2012 by updating the citation to 12 CFR Part 1013 (Regulation M). One commenter suggested changes to the leasing regulation. This commenter believed that credit unions should determine, based on their business practices, whether obtaining a full assignment is necessary to protect their interests. Second, the commenter suggested NCUA add more flexibility regarding the 25% residual value limit because leasing transactions differ based on the length of the lease term and the property involved. Lastly, the commenter asked NCUA to clarify the types of leasing relationships covered by this regulation. These comments are similar to the public comments received for the proposed rule in 1999, which were not adopted by the Board. We are unaware of any reasons to recommend the Board change its position. Therefore, we do not recommend making any regulatory changes at this time.

#### 715 Supervisory Committee Audits and Verifications

Part 715 prescribes the responsibilities of the supervisory committee to obtain an annual audit of the credit union according to its charter type and asset size and to conduct a verification of members' accounts. One commenter suggested that NCUA should amend Part 715's asset threshold in its third tier for annual audits from \$10 million to \$100 million to reflect NCUA's definition of "small entity." Another commenter suggested NCUA amend Part 715 to clarify how it applies to state chartered credit unions. A third commenter recommended expanding the definition of prohibited compensated auditors in §715.9(a) to include familial relationships including adopted children and domestic partners. This rule was last modified in 1999.

NCUA's Office of Examination and Insurance (E&I) is considering amending Part 715 at some point in the future but needs to first perform necessary studies to determine the most appropriate amendments to Part 715 to protect the safety and soundness of credit unions. We recommend the Board consider E&I's findings when they become available.

#### 716 Privacy of Consumer Financial Information

Part 716 formerly governed the treatment of nonpublic personal information of credit union consumers. In 2013, NCUA amended Part 716 to reflect the Dodd-Frank Wall Street Reform and Consumer Protection Act's (Dodd-Frank) transfer of authority for Part 716 to the Bureau of Consumer Financial Protection (CFPB). *See* 78 Fed. Reg. 32545 (May 31, 2013). Under Dodd-Frank, NCUA retains the enforcement authority for credit unions with assets of \$10 billion or less. We received no comments on this section and do not recommend any further changes at this time.

#### 717 Fair Credit Reporting

Part 717 establishes standards for FCUs concerning consumer report information. Sections 1061 and 1088 of the Dodd-Frank Act transferred most of the rule-writing authority for fair

credit reporting to CFPB. NCUA retains regulatory authority for §§717.90 and 717.91, and Appendix J to Part 717. Appendix J contains red flag guidelines for FCUs to use in identifying patterns, practices, and specific forms of activity indicating possible identity theft. Section 717.90 requires each FCU to establish reasonable policies and procedures to address the risk of identity theft and incorporate the guidelines in Appendix J. Under §717.91, credit card and debit card issuers must implement reasonable policies and procedures to assess the validity of a request for a change of address under certain circumstances.

NCUA received two comments on Part 717 in 2016. One commenter recommended that NCUA amend Part 717 to reflect the Dodd-Frank Act's transfer of the remaining sections of Part 717 to the CFPB. The CFPB has already published its Fair Credit Reporting regulation, reflecting this transfer of authority over credit unions and other entities at 12 C.F.R. Part 1022 (Regulation V). *See* 76 Fed. Reg. 79308 (Dec. 21, 2011). While we do not recommend making any substantive regulatory changes to this Part, we support removing subsections A, C, D, E, and I of Part 717 as a housekeeping matter as part of a larger technical amendments rule to reflect the transfer to CFPB.

#### 721 Incidental Powers

Part 721 describes various activities that an FCU may engage in as a permissible exercise of its incidental powers. NCUA currently has in process a rulemaking regarding asset securitization which relates to the incidental powers rule and recently finalized a rule regarding ownership and leasing of fixed assets which also affected the incidental powers rule.

Staff does not recommend making any further amendments to the incidental powers rule beyond those discussed above.

#### 722 Appraisals

Part 722 sets forth the appraisal requirements for federally-related real estate transactions, which are substantially the same as the rules of the other financial regulators. Because of statutory changes in law governing appraisal requirements, appraisal independence, appraisal report portability, registration of appraisal management companies, and automated valuation model quality control standards, Part 722 must comply with Title XIV of the Dodd-Frank Act. NCUA last amended Part 722 in December 2014 in response to requests from credit unions for greater parity with other Federal Financial Institution Examination Council (FFIEC) Agencies in the area of appraisal exemptions. One commenter requested that NCUA continue to monitor the FFIEC Agencies' rulemaking efforts in the area of appraisals and adopt any changes made to maintain parity among the various appraisal regulations.

Additional rules on appraisals are being considered through an interagency working group process. Staff will continue to participate in the working group process and will recommend changes to Part 722 in the future if appropriate.

723

### Member Business Loans; Commercial Lending

Part 723 defines member business loans (MBLs) and commercial loans; provides a principles-based framework for credit unions making MBLs and commercial loans; and implements various statutory restrictions. This rule was recently completely overhauled to eliminate prescriptive requirements and went into effect on January 1, 2017. Public comments included requests for guidance associated with the rule, which has since been issued by the Office of Examination and Insurance. In addition, one commenter asked NCUA to support congressional action that would raise the statutory MBL cap.

Given the timing of the most recent amendments to this Part, we do not recommend any further amendments at this time.

724

### Trustees and Custodians of Certain Tax-Advantaged Savings Plans

Part 724 sets forth the rules governing FCUs acting as trustees and custodians of certain tax-advantaged savings plans. Part 724 was last amended in July 2004 to authorize FCUs to act as trustees for health savings accounts. We received no comments on Part 724 and are unaware of any problems regarding this regulation. We do not recommend any changes at this time.

725

### National Credit Union Administration Central Liquidity Facility

Part 725 sets out rules concerning Central Liquidity Facility (CLF) operations. The rule was adopted in 1979 and underwent its last substantive amendment in 1997. Technical amendments making minor changes were adopted in 2004, 2011, and 2013. Of the four public comments we received that made reference to the CLF, only one identified specific suggestions for changes to Part 725. This commenter suggested adding a definition for the term “correspondent” in §725.2. This commenter also suggested that the CLF adjust its 110% collateral requirement for certain types of collateral in §725.19 to bring the requirements in line with the requirements of the Federal Reserve Bank Discount Window and the Federal Home Loan Banks. Other commenter suggestions were aimed at statutory provisions or CLF policy, which NCUA either does not have the authority to amend or which are not included within the scope of Part 725. These comments ranged from modernizing the FCU Act provisions on the CLF to revising the CLF’s operating circular on NCUA’s website.

As one commenter noted, NCUA’s 2014-2017 Strategic Plan continues to include modernization of the FCU Act’s provisions on the CLF as a legislative priority. Because NCUA’s authority to change CLF regulations is limited by FCU Act provisions, we believe that making any significant substantive changes to Part 725 should await the outcome of this legislative initiative, and therefore do not recommend substantive regulatory amendments at this time.

However, we support making technical housekeeping changes as part of a broader technical amendments rulemaking. These include the following:

- Changing references to “central credit union,” which appear throughout, to “corporate credit union,” which is the current terminology.
- Deleting the reference in the last line of §725.2(h)(2) to “the Federal Savings and Loan Insurance Corporation,” which has been defunct for more than 25 years.
- Deleting footnote 1 in §725.3 and footnote 3 in §725.4, which contain transitional references to actions that would had to have been accomplished by October 1979.
- In the last sentence of §725.4(f), the word “or” needs to be inserted between the words “chartered” and “within.”

## **740 Accuracy of Advertising and Notice of Insured Status**

Part 740 sets out the requirements governing the NCUA official sign and how it should be displayed; the official advertising statement and the manner in which it should be used; and the accuracy of any advertising used by a federally insured credit union (FICU). In May 2011, this rule was amended to require FICUs to include the official advertising statement in: 1) radio and television advertisements of shorter duration than previously required by NCUA and currently required by the Federal Deposit Insurance Corporation (FDIC); 2) annual reports; and 3) statements of condition.

Five commenters requested changes to the Part or agency guidance to make the regulation more relevant for new technologies such as social media, mobile banking, text messaging, and other digital communication platforms. These commenters stated that applying Part 740 to social media is complicated and burdensome. In particular, one commenter stated that §740.5 contains requirements that are impossible to apply to social media, especially interfaces that are interactive. Based on these concerns, the commenter requested that the rules be amended to include more flexibility. Three commenters requested that the Board authorize a shorter version of the official advertising statement, namely “Member NCUA.” One commenter stated that this change would be consistent with the FDIC’s advertising requirements at 12 CFR Part 328, which permit “Member FDIC.” Another commenter requested that the Board expand the list of advertisements that are exempted from the general requirements of Part 740.

Two other commenters requested that NCUA remove the size requirement applicable to print media. Another commenter requested that the exemption applicable to radio and television be expanded for advertisements on “digital billboards.”

We believe the commenters have raised some practical concerns about the current rule. We recommend the Board consider amending Part 740 to modernize it and to place FICUs on a level playing field with banks.

## **741 Requirements for Insurance**

Part 741, in addition to establishing requirements for insurance, places various substantive requirements applicable to FCUs on federally insured, state-chartered credit unions (FISCUs). The rule has been amended numerous times in recent years, paralleling changes to substantive FCU requirements. We received a variety of comments on this Part. A number of comments

addressed substantive issues regarding other Parts of NCUA's regulations that are cross-referenced by Part 741 and other issues outside the scope of this review.

Four commenters generally asked NCUA to improve its efforts as discussed in §741.1 for NCUA to utilize examinations conducted by state regulatory agencies to the maximum extent feasible. One commenter noted that §741.201's cross-reference to Part 713 and §741.202's reference to Part 715 are unclear as to the extent to which the respective Parts' requirements apply to FISCUs. The commenter requested that NCUA clarify this. The same commenter asked NCUA to consolidate the rules applicable to FISCUs to make it easier for FISCUs to understand which rules apply to them. The commenter further stated that both the CFPB and the Financial Crimes Enforcement Network undertook such an effort and that a third party's reorganization of the rules, would be unofficial and no substitute for one from NCUA.

We appreciate commenters' concerns regarding NCUA's reliance on state examinations. However, addressing these concerns does not necessitate making a regulatory amendment to §741.1. We agree that the cross-references to Parts 713 and 715 could be revised to more clearly indicate which subsections are applicable to FISCUs, and we support doing so in a broader technical amendments regulation without making any substantive regulatory amendments to Part 741 at this time.

We do not recommend NCUA produce separate indexes, references, or publications for FISCUs. However, we are aware that NASCUS is currently generating such a product, and NCUA staff is cooperating with NASCUS in this regard. With respect to interest rate risk (IRR), we note that NCUA's Office of Examination and Insurance recently updated the guidance on IRR in the form of a revised chapter of the Examiners' Guide as well as a companion Letter to Credit Unions.

## 745 Share Insurance and Appendix

Part 745 contains the rules governing share insurance coverage for various types of member share accounts. This regulation was recently amended in December 2015 to implement statutory amendments to the FCU Act that provide enhanced, pass-through share insurance for interest on lawyers trust accounts (IOLTAs) and other similar escrow accounts. Commenters addressed various aspects of Part 745 including the insurability of prepaid card accounts and the lack of coverage provided to non-member co-owners of joint revocable trust accounts.

Specifically, one commenter expressed disappointment that NCUA did not extend insurance to all prepaid card accounts in the IOLTA rule and believes NCUA has the authority to do this. The same commenter requested that NCUA maintain an ongoing dialogue with FDIC regarding prepaid cards to ensure as much uniformity in coverage as possible. As expressed in the IOLTA final rule, we do not believe the statutory term "other similar escrow accounts" expands share insurance coverage to all prepaid card accounts.

Another commenter believes that NCUA should authorize insurance coverage for all payroll or stored value cards issued by low-income credit unions where the cards can be traced back to a specific owner in a specific amount. The commenter believes that since nonmember accounts of low-income credit unions are "member accounts" under the FCU Act, the Board



should authorize insurance coverage for all payroll or stored value cards issued by low-income credit unions that meet the above criteria. We believe this issue is already addressed in the current Part 745 and no further Board action is required.

With regards to joint revocable trust accounts with a non-member co-owner, we support coverage of the interests of non-member co-owners of joint revocable trust accounts and their beneficiaries to the extent that statutory amendments are enacted to permit that. At this time, we do not believe the FCU Act provides for coverage of these non-member interests.

We are unaware of any problems suggesting that we should further amend Part 745 at this time.

#### **747                   Administrative Actions, Adjudicative Hearings, Rules of Practice and Procedure, and Investigations**

Part 747 sets forth the various formal and informal adjudicative and non-adjudicative proceedings available to the NCUA Board. These proceedings include cease-and-desist, removal and prohibition, and civil money penalty matters conducted on the record before an administrative law judge or the NCUA Board. In the past three years, only one such proceeding has occurred, as most of these matters are resolved by consent and stipulation.

Part 747 also governs written appeals relating to changes of officials in new or troubled credit unions, the statutory inflation of civil money penalties, and NCUA's non-public investigations. This part does not address appeals of material supervisory determinations in connection with examination reports, which are governed by Interpretive Ruling and Policy Statement 11-1. Other matters appealable to the NCUA Board are described in other Parts, such as creditor appeals in liquidations under Part 709. Four commenters suggested NCUA improve its appeals process for material supervisory determinations. None of the commenters requested changes that relate to matters covered by Part 747. We believe that Part 747 provides appropriate procedures for formal and informal proceedings.

However, we recommend a technical change in §747.12 (Construction of time limits) to make the rule parallel to the Federal Rules of Civil Procedure. The Federal Rules were amended in 2009 to require that all deadlines measured in days be counted in calendar days, not business days. Before the amendment, for periods of 10 days or less, the deadline was counted in business days. More broadly, the Board has expressed an interest in promulgating a regulation to address the appeals rights of credit unions and individuals that spans all of NCUA's current regulations, which we support. The commenters' concerns regarding Part 747 could be addressed in an overarching appeals regulation.