

## B. Summary of Comments

NCUA received twenty-six comment letters regarding the proposed rule: eleven from federal credit unions, four from state credit unions, one from a private individual, and ten from credit union and student trade organizations. Twenty-one commenters fully supported the proposal. Four low-income designated credit unions involved in community development activities and one trade organization that represents community development credit unions opposed the proposal. Those opposed took the position that student credit unions do not fulfill the same mission as those credit unions for which the CDRLP was created. As noted above, NCUA believes that viewpoint underestimates the impact the few remaining student credit unions have on the communities they serve. Student credit unions not only provide their members with valuable financial services generally not available but also a unique opportunity for financial education. Also, NCUA believes a small CDRLP loan or technical assistance grant might help a student credit union survive or prosper while having a minor impact on CDRLP funding availability. Accordingly, NCUA adopts the amendments to part 705 as proposed.

## 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 credit unions, defined as those under ten million dollars in assets. This rule permits student credit unions to participate in the CDRLP, without imposing any additional regulatory burden. The final amendments 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. The final rule would not have substantial direct effects on the states, on the connection 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 would 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 Procedure Act, 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

## List of Subjects in 12 CFR Part 705

Community development, Credit unions, Loan programs—housing and community development, Reporting and recordkeeping requirements, Technical assistance.

By the National Credit Union Administration Board on July 22, 2004.

**Becky Baker,**

*Secretary of the Board.*

■ For the reasons stated above, NCUA amends 12 CFR part 705 as follows:

## PART 705—COMMUNITY DEVELOPMENT REVOLVING LOAN PROGRAM FOR CREDIT UNIONS

■ 1. The authority citation for part 705 continues to read as follows:

**Authority:** 12 U.S.C. 1772c–1; 42 U.S.C. 9822 and 9822 note.

## § 705.3 [Amended]

■ 2. Remove the parenthetical clause “(excluding student credit unions)” from § 705.3(b).

[FR Doc. 04–17257 Filed 7–28–04; 8:45 am]

BILLING CODE 7535–01–P

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Parts 721 and 724

### Health Savings Accounts

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** The NCUA is amending its regulations governing a federal credit union’s (FCU) authority to act as trustee or custodian to authorize FCUs to serve as trustee or custodian for Health Savings Accounts (HSA). The NCUA is issuing this final rule so that FCUs and their members can take advantage of the authority granted in the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Medicare Act). The Medicare Act authorizes the establishment of HSAs by individuals who obtain a qualifying high deductible health plan and specifies that an HSA may be established and maintained at an FCU. The final rule also amends NCUA’s incidental powers regulation to include trustee or custodial services for HSAs as a pre-approved activity.

**DATES:** This rule is effective July 29, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ross P. Kendall, Staff Attorney, at the above address, or telephone: (703) 518–6562.

### SUPPLEMENTARY INFORMATION:

#### Background

On May 20, 2004, the NCUA Board requested comment on a proposed change to parts 724 and 721 of its regulations to permit federal credit unions (FCUs) to serve as trustee or custodian for health savings accounts (HSAs) established by their members. 69 FR 29907 (May 26, 2004). As authorized by Title XII of the Medicare Act, HSAs are available to anyone with a qualifying high deductible health plan. The NCUA proposed amending Part 724 of its regulations to specifically include HSAs in the listing of the types of accounts for which an FCU may fulfill the role of trustee or custodian on behalf of members. In addition, NCUA proposed to amend Part 724 to clarify that an FCU’s authority to fulfill this role is not limited to pension or retirement accounts, but rather includes other

specific types of tax advantaged savings accounts, such as Coverdell Education Savings Accounts and HSAs. The amendment also clarifies that HSAs are among the types of accounts for which a member may direct investment decisions. Finally, NCUA proposed to amend Part 721 to include serving as trustee or custodian for member HSAs within the category of activities in which an FCU may engage as a preapproved exercise of its incidental powers.

NCUA received six comments regarding the proposed changes from three federal credit unions, two national credit union trade associations, and one credit union service provider.

#### Summary of Comments

The commenters uniformly supported all aspects of the proposal. All commenters noted that the proposed amendments would provide FCU members with a viable, tax-advantaged option for obtaining health insurance and health care at a reasonable cost. Three commenters noted the importance of the proposal in assuring that FCUs can maintain parity with banks and thrifts, each of which are able to offer these types of accounts to their customers. Two commenters specifically approved of the proposal to broaden the rules to refer to "Tax Advantaged Savings Plans," which they believe is more accurate and will allow for a more flexible approach toward offering similar types of savings plans that may become available in the future. Three commenters noted their agreement with the NCUA's assessment, as discussed in the preamble to the proposed rule, that FCUs should not have difficulty in handling the administrative duties associated with serving as account trustee or custodian, based on their experience with IRAs.

#### Additional Guidance

Additional information about HSAs, including important details concerning the type of high deductible health plan an individual must obtain to qualify for an HSA, is available from the Public Affairs Office of the U.S. Department of the Treasury. The Treasury Department has also developed proposed model forms for use in establishing an HSA. The information and the proposed forms are directly accessible from the Treasury Web site, <http://www.ustreas.gov>.

#### Final Rule

In view of the comments, NCUA is adopting the proposed amendments as a final rule without change.

#### Regulatory Procedures

##### *Regulatory Flexibility Act*

The final rule conforms current regulations to recent changes in the federal tax law and implements authority for FCUs to offer HSAs to their members. The Board has determined and certifies that the rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

##### *Paperwork Reduction Act*

NCUA has determined that the proposed 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. The final rule would not have substantial direct effects on the states, on the connection 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 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 would 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 Procedure Act, 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the

Small Business Regulatory Enforcement Fairness Act of 1996.

#### List of Subjects

##### *12 CFR Part 721*

Incidental Powers.

##### *12 CFR Part 724*

Pensions, Reporting and recordkeeping, Trusts and trustees.

By the National Credit Union Administration Board, this 22nd day of July, 2004.

**Becky Baker,**

*Secretary, NCUA Board.*

■ For the reasons stated in the preamble, NCUA amends 12 CFR chapter VII as follows:

#### PART 721—INCIDENTAL POWERS

■ 1. The authority citation for Part 721 continues to read as follows:

**Authority:** 12 U.S.C. 1757(17), 1766 and 1789.

■ 2. Amend § 721.3 by revising paragraph (l) to read as follows:

**§ 721.3 What categories of activities are preapproved as incidental powers necessary or requisite to carry on a credit union's business?**

\* \* \* \* \*

(1) *Trustee or custodial services.* Trustee or custodial services are services in which you are authorized to act under any written trust instrument or custodial agreement created or organized in the United States and forming part of a tax-advantaged savings plan, as authorized under the Internal Revenue Code. These services may include acting as a trustee or custodian for member retirement, education and health savings accounts.

#### PART 724—TRUSTEES AND CUSTODIANS OF PENSION PLANS

■ 3. The authority citation for Part 724 continues to read as follows:

**Authority:** 12 U.S.C. 1757, 1765, 1766 and 1787.

■ 4. Revise the part heading for Part 724 to read as follows:

#### PART 724—TRUSTEES AND CUSTODIANS OF CERTAIN TAX-ADVANTAGED SAVINGS PLANS

■ 5. Amend § 724.1 by revising the section heading and first two sentences to read as follows:

**§ 724.1 Federal credit unions acting as trustees and custodians of certain tax-advantaged savings plans.**

A federal credit union is authorized to act as trustee or custodian, and may

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. \* \* \*

■ 6. Amend § 724.2 by revising the section heading and the introductory text to read as follows:

#### **§ 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: \* \* \*

[FR Doc. 04-17259 Filed 7-28-04; 8:45 am]

BILLING CODE 7535-01-P

## **NATIONAL CREDIT UNION ADMINISTRATION**

### **12 CFR Part 745**

#### **Share Insurance; Living Trust Accounts**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** NCUA is adopting as a final rule without change the interim rule amending Part 745 of its regulations concerning share insurance coverage for beneficial interests in living trust accounts. NCUA published the interim rule with a sixty-day comment period at 69 FR 8798, on February 26, 2004.

**DATES:** This final rule is effective on July 29, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ross Kendall, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518-6562.

**SUPPLEMENTARY INFORMATION:** Effective April 1, 2004, NCUA revised its living trust account rules to provide for

insurance coverage of up to \$100,000 per qualifying beneficiary who, as of the date of a credit union's failure, would become entitled to the living trust assets upon the owner's death, regardless of the existence of a defeating contingency affecting the beneficiary's interest. The NCUA Board determined that elimination of the defeating contingency provisions in the rule was beneficial to credit unions and their members because the operation of the rule was complex and not widely understood. The amendment also clarified that a credit union need not maintain records disclosing the names and interests of beneficiaries of living trusts. In addition, the amendment preserved parity between the NCUA and the Federal Deposit Insurance Corporation (FDIC), which administers the insurance fund that protects bank depositors and which had, in January of 2004, adopted a similar amendment to its rules.

Even though NCUA issued the amendment as an interim final rule, the Board established a sixty-day comment period in which interested members of the public could comment on any aspect of the amendment. We received five comments, all of which were fully supportive of the amendment. The commenters uniformly indicated the changes would result in elimination of confusion by credit unions and their members and an enhanced understanding of the scope and operation of the share insurance rules for beneficial interests in living trust accounts. The commenters also cited the benefit of having uniformity of insurance coverage between living trust accounts and other types of revocable trust accounts, as well as the benefit of parity between the NCUA and the FDIC.

In view of the comments and the benefits described herein and in the preamble to the interim rule, the NCUA Board has determined to adopt the rule as final without change.

#### **List of Subjects in 12 CFR Part 745**

Credit unions, Share insurance.

By the National Credit Union Administration Board on July 22, 2004.

**Becky Baker,**

*Secretary of the Board.*

#### **PART 745—SHARE INSURANCE AND APPENDIX**

■ Accordingly, the interim final rule amending 12 CFR 745.4, which was published at 69 FR 8798 on February 26, 2004, is adopted as a final rule without change.

[FR Doc. 04-17258 Filed 7-28-04; 8:45 am]

BILLING CODE 7535-01-P

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

[Docket No. 2002-NM-215-AD; Amendment 39-13747; AD 2004-15-13]

RIN 2120-AA64

#### **Airworthiness Directives; McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and Model MD-88 Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87), and Model MD-88 airplanes, that requires replacement of certain freeze protection ribbon heaters in the lavatory water supply system, and flushing, cleaning, and sterilizing the potable water system; disconnecting, coiling, and stowing the wiring of the freeze protection ribbon heater; or removal of freeze protection heaters. This action is necessary to prevent failure of freeze protection ribbon heaters, which could result in the charring, scorching, smoking, and shorting out of freeze protection ribbon heaters in the lavatory water supply system. This condition, if not corrected, could also result in electrical arcing of freeze protection ribbon heaters, leading to fire and damage to water lines and components under the lavatory sink. This action is intended to address the identified unsafe condition.

**DATES:** Effective September 2, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of September 2, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the National Archives