

duplicative or obsolete and removal will not alter any aspect of the program.

#### List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Soybeans and soybean products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 1220 is amended as follows:

#### **PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION**

1. The authority citation for part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311.

#### **§§ 1220.228 [Amended]**

Center Heading “Refund of Assessments” §§ 1220.330–120.332, §§ 1220.500–1220.555 (Subpart D) and §§ 1220.701–1220.731 (Subpart F) [Removed and reserved]

2. In part 1220, §§ 1220.228 (b)(5)(ii) through (b)(6)(iii), 1220.330 through 1220.332 and the undesignated centerheading, Subpart D consisting of §§ 1220.500 through 555, and Subpart F Consisting of §§ 1220.701 through 1220.731 are removed and reserved.

#### **§ 1220.257 [Amended]**

3. In § 1220.257, the words “of 1980” are removed.

Dated: September 23, 1996.

Michael V. Dunn,

*Assistant Secretary, Marketing and Regulatory Programs.*

[FR Doc. 96–24845 Filed 9–26–96; 8:45 am]

BILLING CODE 3410–02–P

#### **NATIONAL CREDIT UNION ADMINISTRATION**

#### **12 CFR Parts 701 and 705**

#### **Community Development Revolving Loan Program for Credit Unions**

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

**ACTION:** Final amendments.

**SUMMARY:** The purpose of the Community Development Revolving Loan Program for Credit Unions is to make reduced rate loans and provide technical assistance to both Federal and State-chartered credit unions serving low-income communities. The NCUA Board is issuing final amendments to this regulation to: eliminate the limits on technical assistance that may be provided per year to participating credit

unions; clarify that student credit unions may not participate in the Program; clarify that credit unions may receive up to \$300,000 in loans in the aggregate at any one time; and require additional documentation from nonfederally insured credit unions that may wish to participate in the Program. The NCUA Board is also issuing a technical amendment to another regulatory provision to conform it to the revised Program regulations.

**EFFECTIVE DATE:** October 1, 1996.

#### **FOR FURTHER INFORMATION CONTACT:**

Joyce Jackson, Director, Office of Community Development Credit Unions, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone (703) 518–6610 or Michael J. McKenna, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

**SUPPLEMENTARY INFORMATION:** The purpose of the Community Development Revolving Loan Program (“Program”) is to make reduced rate loans and provide technical assistance to Federal and State-chartered credit unions serving low-income communities so that they may provide needed financial services and help to stimulate the economy in the community served. Although the Program has functioned well, the Board proposed four amendments to improve and clarify certain aspects of the Program. The NCUA Board issued proposed amendments to the Program on January 25, 1996. 61 FR 4239 (February 5, 1996). Four comment letters were received. Three commenters were state credit union leagues and one commenter was a national trade association. All of the commenters supported the proposed amendments.

#### *Section 705.3 Definitions*

This section, among other things, defines the term low-income members. In documenting its low-income membership, a credit union that serves a geographic area where a majority of residents fall at or below the annual income standard is presumed to be serving predominantly low-income members. In applying the low-income standard, the Regional Director must use specifically defined differentials for geographical areas with a higher cost of living. These differentials were originally obtained from a list maintained by the Bureau of Labor Statistics, as updated by the Employment and Training Administration. In order to recognize geographic economic differences, eleven cities that were above the national average for the lower level standard of

living numbers were provided differentials to be applied by the Regional Director. NCUA requested comment on updating the differentials. The commenters did not suggest any changes. The Board does not believe there is any compelling reason to change the differentials at this time. However, to clarify the term “geographic area” and to provide for consistent application of agency policy, the Board believes that the geographic area definition should be based on either the Consolidated Metropolitan Statistical Area (CSMA) or Metropolitan Statistical Area (MSA) classification, as appropriate, that are used by the Office of Management and Budget (OMB) or defined by the Census Bureau.

Some in the credit union community have questioned whether student credit unions are eligible to participate in the Program. The preamble to the final 1993 amendments stated that although “student federal credit unions are ‘low-income credit unions’ for purposes of receiving nonmember deposits, they do not qualify for participation in the Program because they are not specifically involved in the stimulation of economic development activities and community revitalization efforts.” 58 FR 21642, 21645 (April 23, 1993). The Board proposed to amend Section 705.3(b) to clarify that student credit unions may not participate in the Program. All four commenters approved of this proposal. Accordingly, the Board is adopting this clarification in the final rule.

#### *Section 705.5 Application for Participation*

Because NCUA does not regulate nonfederally insured state chartered credit unions, the Board proposed that a nonfederally insured credit union provide in its application for Program participation a copy of its most recent outside audit report and proof of deposit and surety bond insurance which states the maximum insurance levels permitted by the policies, so that NCUA may properly consider the application. This proposal would simply require documentation that is comparable to the information accessible to NCUA for federally insured credit unions. All four commenters supported this proposal. The Board is also changing the term “delinquent loan list” to “schedule of delinquent loans” so that the information submitted will be comparable to information NCUA obtains from federally insured credit unions. The Board is also streamlining this section so that the requirements found in proposed Section 705.5(b) (iii) through (v) are simply stated in Section

705.5(b)(iii). Otherwise, the Board is adopting the proposed amendment in final.

#### *Section 705.7 Loans to Participating Credit Unions*

Section 705.7 currently states that a participating credit union is eligible "to receive up to \$300,000, as determined by the NCUA Board, in the form of a loan from the Community Development Revolving Loan Fund for Credit Unions." Some have questioned whether this means that a credit union may receive more than one \$300,000 loan under the Program. The Board's proposal clarified that because of the Program's limited funds that the aggregate dollar amount of outstanding loans to one credit union is limited to \$300,000. All four commenters supported this proposal. Accordingly, the Board is adopting the proposed amendment in final.

#### *Section 705.10 Technical Assistance*

Under the current Section 705.10, technical assistance may not exceed \$120,000 per year. The Board proposed to eliminate the dollar threshold on technical assistance in the anticipation that available earnings may exceed \$120,000. Such a change would provide NCUA greater flexibility in providing technical assistance. All four commenters supported the proposed amendment. Accordingly, the Board is adopting the proposed amendment in final.

#### *Regulatory Procedures*

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under \$1 million in assets). The final amendments generally clarify operational issues. The one significant change regarding technical assistance is expected to benefit credit unions by increasing the available pool of funds for technical assistance. Accordingly, the Board determines and certifies that this final rule does not have a significant impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

##### *Paperwork Reduction Act*

NCUA has determined that the final amendments do not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget (OMB).

#### *Executive Order 12612*

Executive Order 12612 requires NCUA to consider the effect of its action on state interests. The Program is implemented in its entirety by the NCUA. The final amendments will permit more funds to be available for technical assistance to all credit unions, including state-chartered credit unions. The final amendments impose a minimal burden on nonfederally insured state chartered credit unions that wish to participate in the Program. The amendments will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of powers among the various levels of government.

#### *List of Subjects*

##### *12 CFR Part 701*

Credit, Credit unions.

##### *12 CFR Part 705*

Community development, Credit unions, Loans programs-housing and community development, Reporting and recordkeeping requirements, Technical assistance.

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

Becky Baker,  
*Secretary of the Board.*

Accordingly, NCUA amends 12 CFR parts 701 and 705 as follows:

#### **PART 701—ORGANIZATION AND OPERATION 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 1798. 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.

2. Section 701.34 is amended by revising paragraph (a)(1) to read as follows:

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

(a) *Designation of low-income status.*  
(1) Section 107(6) of the Federal Credit Union Act (12 U.S.C. 1757(6)) authorizes federal credit unions serving predominantly low-income members to receive shares, share drafts and share certificates from nonmembers. In order to utilize this authority, a federal credit

union must receive a low-income designation from its Regional Director. The designation may be removed by the Regional Director upon notice to the federal credit union if the definitions set forth in paragraphs (a) (2) and (3) of this section are no longer met. Removals may be appealed to the NCUA Board within 60 days. Appeals should be submitted through the Regional Director.

\* \* \* \* \*

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

3. The authority citation for part 705 is revised to read as follows:

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

4. Section 705.3 is amended by revising paragraph (b) to read as follows:

##### **§ 705.3 Definitions.**

\* \* \* \* \*

(b) For purposes of this part, a *participating credit union* means a state- or federally-chartered credit union (excluding student credit unions) that is specifically involved in the stimulation of economic development activities and community revitalization efforts aimed at benefiting the community it serves; whose membership consists of predominantly low-income members as defined in paragraph (a) of this section or applicable state standards as reflected by a current low-income designation pursuant to § 701.34(a)(1) or § 741.204 of this chapter or, in the case of a state-chartered nonfederally insured credit union, under applicable state standards; and has submitted an application for a loan and/or technical assistance and has been selected for participation in the Program in accordance with this part.

5. Section 705.5 is amended by revising paragraph (b)(1) to read as follows:

##### **§ 705.5 Application for participation.**

\* \* \* \* \*

(b) \* \* \*  
(1) Information demonstrating a sound financial position and the credit union's ability to manage its day-to-day business affairs, including the credit union's latest financial statement. Nonfederally insured credit unions must include the following:

(i) A copy of its most recent outside audit report;

(ii) Proof of deposit and surety bond insurance which states the maximum insurance levels permitted by the policies;

(iii) A balance sheet, an income and expense statement, and a schedule of

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]

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## **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.