

Part 701 Organization and Operations of Federal Credit Unions

§ 701.6 Fees Paid by Federal Credit Unions.

- (a) Basis for assessment. Each calendar year or as otherwise directed by the Board, each Federal credit union shall pay to the Administration for the current National Credit Union Administration fiscal year (January 1 to December 31) an operating fee in accordance with a schedule as fixed from time to time by the National Credit Union Administration Board based on the total assets of each Federal credit union as of December 31 of the preceding year or as otherwise determined pursuant to paragraph (b) of this section.
- (b) Coverage. The operating fee shall be paid by each Federal credit union engaged in operations as of January 1 of each calendar year, except as otherwise provided by this paragraph.
 - (1) New charters. A newly chartered Federal credit union will not pay an operating fee until the year following the first full calendar year after the date chartered.
 - (2) Conversions. A state chartered credit union that converts to Federal charter will pay an operating fee in the year following the conversion. Federal credit unions converting to state charter will not receive a refund of the operating fee paid to the Administration in the year in which the conversion takes place.
 - (3) Mergers. A continuing Federal credit union that has merged with another credit union will pay an operating fee in the following year based on the combined total assets of the merged credit union and the continuing Federal credit union as of December 31 of the year in which the merger took place. For purposes of this requirement, a purchase and assumption transaction wherein the continuing Federal credit union purchases all or essentially all of the assets of another credit union shall be deemed a merger. Federal credit unions merging with other Federal or state credit unions will not receive a refund of the operating fee paid to the Administration in the year in which the merger took place.
 - (4) Liquidations. A Federal credit union placed in liquidation will not pay any operating fee after the date of liquidation.
- (c) Notification. Each Federal credit union shall be notified at least 30 days in advance of the schedule of fees to be paid. A Federal credit union may submit written comments to the Board for consideration regarding the existing fee schedule. Any subsequent revision to the schedule shall be provided to each Federal credit union at least 15 days before payment is due.
- (d) Assessment of Administrative Fee and Interest for Delinquent Payment. Each Federal credit union shall pay to the Administration an administrative fee, the costs of collection, and interest on any delinquent payment of its operating fee. A payment will be considered delinquent if it is post-marked later than the date stated in the notice to the credit union provided under § 701.6(c). The National Credit Union Administration may waive or abate charges or collection of interest if circumstances warrant.
 - (1) The administrative fee for a delinquent payment shall be an amount fixed from time to time by the National Credit Union Administration Board and based upon

the administrative costs of such delinquent payments to the Administration in the preceding year.

- (2) The costs of collection shall be the actual hours expended by Administration personnel multiplied by the average hourly salary and benefits costs of such personnel as determined by the National Credit Union Administration Board.
- (3) The interest rate charged on any delinquent payment shall be the U.S. Department of the Treasury Tax and Loan Rate in effect on the date when the payment is due as provided in 31 U.S.C. § 3717.
- (4) If a credit union makes a combined payment of its operating fee and its share insurance deposit as provided in § 741.4 of this chapter and such payment is delinquent, only one administrative fee will be charged and interest will be charged on the total combined payment.

§ 701.14 Change in Official or Senior Executive Officer in Credit Unions that are Newly Chartered or are in Troubled Condition.

- (a) Statement of Scope and Purpose. Section 212 of the Federal Credit Union Act (12 U.S.C. 1790a) sets forth conditions under which a credit union must notify NCUA in writing of any proposed changes in its board of directors, committee members or senior executive staff. The regulation only applies in cases of newly chartered credit unions and credit unions in troubled condition.
- (b) Definitions. For the purposes of this section:
 - (1) “Committee member” means any individual who serves as an official of the credit union in the capacity of a credit committee member or supervisory committee member.
 - (2) “Senior executive officer” means a credit union’s chief executive officer (typically this individual holds the title of president or treasurer/manager), any assistant chief executive officer (e.g., any assistant president, any vice president or any assistant treasurer/manager) and the chief financial officer (controller). The term “senior executive officer” also includes employees of an entity, such as a consulting firm, hired to perform the functions of positions covered by the regulation.
 - (3) Except as provided in paragraph (b)(4) of this section for corporate credit unions, “troubled condition” means any insured credit union that has one or a combination of the following conditions:
 - (i) Has been assigned
 - (A) A 4 or 5 CAMEL composite rating by the NCUA in the case of a federal credit union, or
 - (B) An equivalent 4 or 5 CAMEL composite rating by the state supervisor in the case of a federally insured, state-chartered credit union, or
 - (C) A 4 or 5 CAMEL composite rating by NCUA based on core workpapers received from the state supervisor in the case of a federally insured, state-chartered credit union in a state that does not use the CAMEL system. In this case, the state supervisor will be notified in writing by the Regional Director in the Region in which the credit union is located that the credit union has been designated by NCUA as a troubled institution;

- (ii) Has been granted assistance as outlined under Sections 208 or 216 of the Federal Credit Union Act.
- (4) In the case of a corporate credit union, “troubled condition” means any insured corporate credit union that has one or a combination of the following conditions:
- (i) Has been assigned
 - (A) A 4 or 5 Corporate Risk Information System (CRIS) rating by NCUA in either the Financial Risk or Risk Management composites, in the case of a federal corporate credit union, or
 - (B) An equivalent 4 or 5 CRIS rating in either the Financial Risk or Risk Management composites by the state supervisor in the case of a federally insured, state-chartered corporate credit union in a state that has adopted the CRIS system, or an equivalent 4 or 5 CAMEL composite rating by the state supervisor in the case of a federally insured, state-chartered corporate credit union in a state that uses the CAMEL system, or
 - (C) A 4 or 5 CRIS rating in either the Financial Risk or Risk Management composites by NCUA based on core workpapers received from the state supervisor in the case of a federally insured, state-chartered credit union in a state that does not use either the CRIS or CAMEL system. In this case, the state supervisor will be notified in writing by the Director of the Office of Corporate Credit Unions that the corporate credit union has been designated by NCUA as a troubled institution;
 - (ii) has been granted assistance as outlined under Sections 208 or 216 of the Federal Credit Union Act.
- (c) Prior Notice Requirement. An insured credit union shall give NCUA written notice at least 30 days prior to the effective date of any addition or replacement of a member of the board of directors or committee member or the employment or change in responsibilities of any individual to a position as a senior executive officer if:
- (1) The credit union has been chartered for less than 2 years; or
 - (2) The credit union meets the definition of troubled condition as set forth in paragraph 701.14(b)(3) or (4).
- (d) Procedures for Notice of Proposed Change in Official or Senior Executive Officer.
- (1) Filing and acceptance. Notices shall be filed with the appropriate Regional Director. In the case of a corporate credit union, notice shall be filed with the Director of the Office of Corporate Credit Unions. Additional references herein to Regional Director will, for corporate credit unions, mean the Director of the Office of Corporate Credit Unions. State-chartered federally insured credit unions shall also file a copy of the notice with their state supervisor. The notice shall contain information pertaining to the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted, subject to the authority of the Regional Director or his or her designee to require additional information. The information submitted must include the identity, personal history, business background, and experience of the individual, including material business activities and affiliations during the past 5 years, and a description of any material pending legal or administrative proceedings in which the individual is a party and any criminal indictment or conviction of such person by a state or

Federal court. Each individual on whose behalf the notice is filed must attest to the validity of the information filed. At the option of the individual, the information may be forwarded to the Regional Director by the individual; however, in such cases, the credit union must file a notice to that effect. Within ten calendar days after receiving the notice, the Regional Director will inform the credit union either that the notice is complete or that additional specified information is needed and must be submitted within 30 calendar days. If the initial notice is complete, the Regional Director will issue a written decision of approval or disapproval to the individual and the credit union within 30 calendar days of receipt of the notice. If the initial notice is not complete, the Regional Director will issue a written decision within 30 calendar days of receipt of the original notice plus the amount of time taken by the credit union to provide the requested additional information. If the additional information is not submitted within 30 calendar days of the Regional Director's request, the Regional Director may either disapprove the proposed individual or review the notice based on the information provided. If the credit union and the individual have submitted all requested information and the Regional Director has not issued a written decision within the applicable time period, the individual is approved.

- (2) Waiver of prior notice requirement. Parties may petition the appropriate Regional Director for a waiver of the prior notice required under this Section. Waiver may be granted if it is found that delay could harm the credit union or the public interest. Any waiver shall not affect the authority of NCUA to issue a Notice of Disapproval within 30 days of the waiver, or within 30 days of any subsequent required notice.
- (3) Election of directors or credit committee members.
 - (i) In the case of the election of a new member of the board of directors or credit committee member at a meeting of the members of a federally insured credit union, prior notice is not required. However, a completed notice must be filed with the appropriate Regional Director within 48 hours of the election.
 - (ii) If a director or credit committee member is disapproved by NCUA, the board of directors of the credit union may appoint its own alternate, to serve until the next annual meeting, contingent upon NCUA approval.
- (e) Commencement of service. A proposed director, committee member or senior executive officer may begin to serve temporarily until the credit union and the individual are notified in writing of NCUA's approval or disapproval of the proposed addition or employment.
- (f) Notice of Disapproval. NCUA may disapprove the individual's serving as a director, committee member or senior executive officer if it finds that the competence, experience, character, or integrity of the individual with respect to whom a notice under this section is submitted indicates that it would not be in the best interests of the members of the credit union or of the public to permit the individual to be employed by, or associated with, the credit union. The Notice of Disapproval will advise the parties of their rights of appeal pursuant to 12 CFR Part 747 subpart J of NCUA's Regulations.

§ 701.21(c)(8) & (d)(5) Loans to Members and Lines of Credit to Members.

(c) General Rules:

(8)

- (i) Except as otherwise provided herein, no official or employee of a Federal credit union, or immediate family member of an official or employee of a Federal credit union, may receive, directly or indirectly, any commission, fee, or other compensation in connection with any loan made by the credit union.
- (ii) For the purposes of this section: *Compensation* includes non monetary items, except those of nominal value. *Immediate family member* means a spouse or other family member living in the same household. *Loan* includes line of credit. *Official* means any member of the board of directors or a volunteer committee. *Person* means an individual or an organization. *Senior management employee* means the credit union's chief executive officer (typically, this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President, or Assistant Treasurer/Manager), and the chief financial officer (Comptroller). *Volunteer official* means an official of a credit union who does not receive compensation from the credit union solely for his or her service as an official.
- (iii) This section does not prohibit:
 - (A) Payment, by a Federal credit union, of salary to employees;
 - (B) Payment, by a Federal credit union, of an incentive or bonus to an employee based on the credit union's overall financial performance;
 - (C) Payment, by a Federal credit union, of an incentive or bonus to an employee, other than a senior management employee, in connection with a loan or loans made by the credit union, provided that the board of directors of the credit union establishes written policies and internal controls in connection with such incentive or bonus and monitors compliance with such policies and controls at least annually.
 - (D) Receipt of compensation from a person outside a Federal credit union by a volunteer official or non senior management employee of the credit union, or an immediate family member of a volunteer official or employee of the credit union, for a service or activity performed outside the credit union, provided that no referral has been made by the credit union or the official, employee, or family member.

(d) Loans and Lines of Credit to Officials:

- (5) Nonpreferential treatment. The rates, terms and conditions on any loan or line of credit either made to, or endorsed or guaranteed by
 - (i) an official
 - (ii) an immediate family member of an official, or
 - (iii) any individual having a common ownership, investment or other pecuniary interest in a business enterprise with an official or with an immediate family member of an official shall not be more favorable than the rates, terms and conditions for comparable loans or lines of credit to other credit union members. "Immediate family members" means a spouse or other family member living in the same household.

§ 701.32 Payment on Shares by Public Units and Non-members.

- (a) Authority. A Federal credit union may, to the extent permitted under Section 107(6) of the Act and this section, receive payments on shares, (regular shares, share certificates, and share draft accounts) from public units and political subdivisions thereof (as those terms are defined in § 745.1) and nonmember credit unions, and to the extent permitted under the Act, this section and § 701.34, receive payments on shares (regular shares, share certificates, and share draft accounts) from other nonmembers.
- (b) Limitations.
- (1) Unless a greater amount has been approved by the Regional Director, the maximum amount of all public unit and nonmember shares shall not, at any given time, exceed 20% of the total shares of the federal credit union or \$1.5 million, whichever is greater.
 - (2) Before accepting any public unit or non-member shares in excess of 20% of total shares, the board of directors must adopt a specific written plan concerning the intended use of these shares and forward a copy of the plan to the Regional Director. The plan must include:
 - (i) A statement of the credit union's needs, sources and intended uses of public unit and non-member shares;
 - (ii) Provision for matching maturities of public unit and nonmember shares with corresponding assets, or justification for any mismatch; and
 - (iii) Provision for adequate income spread between public unit and nonmember shares and corresponding assets.
 - (3) A federal credit union seeking an exemption from the limits of paragraph (b)(1) of this section must submit to the Regional Director a written request including:
 - (i) The new maximum level of public unit and nonmember shares requested, either as a dollar amount or a percentage of total shares;
 - (ii) The current plan adopted by the credit union's board of directors concerning the use of new public unit and nonmember shares;
 - (iii) A copy of the credit union's latest financial statement; and
 - (iv) A copy of the credit union's loan and investment policies.
 - (4) Where the financial condition and management of the credit union are sound and the credit union's plan for the funds is reasonable, there will be a presumption in favor of granting the request. When granted, exemptions will normally be for a two-year period. The Regional Director will provide a written explanation for an exemption that is granted for a lesser time period.
 - (5) The Regional Director will provide a written determination on an exemption request within 30 calendar days after receipt of the request. The 30-day period will not begin to run until all necessary information has been submitted to the Regional Director. All denials may be appealed to the NCUA Board in a timely manner. Appeals should be submitted through the Regional Director.
 - (6) Upon expiration of an exemption, non-member shares currently in the credit union in excess of the limits established pursuant to (b)(1) of this section will continue to be insured by the National Credit Union Insurance Fund within applicable limits. No new shares in excess of the limits established pursuant to (b)(1) of this section shall be accepted. Existing share certificates in excess of

the limits established pursuant to (b)(1) of this section may remain in the credit union only until maturity.

- (c) The limitations herein do not apply to accounts maintained in accordance with 701.37 (Treasury Tax and Loan Depositories; Depositories and Financial Agents of the Government) and matching funds required by 705.7(b) (Community Development Revolving Loan Program for Credit Unions). Once a loan granted pursuant to Part 705 is repaid, nonmember share deposits accepted to meet the matching requirement are subject to this section.

§ 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.

(2) The term “low-income members” shall mean those members who make less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics or those members whose annual household income falls at or below 80 percent of the median household income for the nation as established by the Census Bureau or those members otherwise defined as low-income members as determined by order of the NCUA Board.

- (i) 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 standards, Regional Directors shall make allowances for geographical areas with higher costs of living. The following is the exclusive list of geographic areas with the differentials to be used:

	Percent
Hawaii	40
Alaska	36
Washington, DC	19
Boston	17
San Diego	15
Los Angeles	14
New York	13
San Francisco	13
Seattle	10
Chicago	7
Philadelphia	7

- (ii) The term “low-income member” also includes those members who are enrolled as full-time or part-time students in a college, university, high school, or vocational school.
- (3) The term “predominantly” is defined as a simple majority.
- (b) Receipt of secondary capital accounts by low-income designated credit unions. A Federal credit union having a designation of low-income status pursuant to paragraph (a) of this section may offer secondary capital accounts to non-natural person members and non-natural person non-members on the following conditions:
 - (1) Prior to offering secondary capital accounts, the credit union shall adopt, and forward to the appropriate NCUA Regional Director, a written plan for use of the funds in the secondary capital accounts and subsequent liquidity needs to meet repayment requirements upon maturity of the accounts.
 - (2) The secondary capital account must be established as a uninsured secondary capital account or other form of non-share account.
 - (3) The maturity of the secondary capital account must be for a minimum of five years.
 - (4) The secondary capital account must not be redeemable prior to maturity.
 - (5) The secondary capital account shall not be insured by the National Credit Union Share Insurance Fund or any governmental or private entity.
 - (6) The secondary capital account holder’s claim against the credit union must be subordinate to all other claims including those of share-holders, creditors and the National Credit Union Share Insurance Fund.
 - (7) Funds deposited into the secondary capital account, including interest accrued and paid into the secondary capital account, must be available to cover operating losses realized by the credit union that exceed its net available reserves and undivided earnings (*i.e.*, reserves and undivided earnings exclusive of allowance accounts for loan losses), and to the extent funds are so used, the credit union shall under no circumstances restore or replenish the account. The credit union may, in lieu of paying interest into the secondary capital account, pay interest accrued on the secondary capital account directly to the investor or into a separate account from which the secondary capital investor may make withdrawals. Losses shall be distributed pro-rata among all secondary capital accounts held by the credit union at the time the losses are realized.
 - (8) The secondary capital account may not be pledged or provided by the account holder as security on a loan or other obligation with the credit union or any other party.
 - (9) In the event of merger or other voluntary dissolution of the credit union, other than merger into another low-income designated credit union, the secondary capital accounts will, to the extent they are not needed to cover losses at the time of merger or dissolution, be closed and paid out to the account-holder.
 - (10) A secondary capital account contract agreement must be executed between an authorized representative of the account holder and the credit union accurately establishing the terms and conditions of this section and containing no provisions inconsistent therewith.

- (11) A disclosure and acknowledgment as set forth in the Appendix to this section must be provided to and executed by an authorized representative of the secondary capital account holder at the time of entering into the account agreement, and original copies of the account agreement and the disclosure and acknowledgment must be retained by the credit union for the term of the agreement.
- (12) As provided in § 702.204(b)(11) of this chapter, 60 days after the effective date of a credit union being classified as “critically undercapitalized” under NCUA’s prompt corrective action rules, the NCUA Board may prohibit payments of principal, dividends or interest on the credit union’s uninsured secondary capital accounts established after August 7, 2000, except that unpaid dividends or interest shall continue to accrue under the terms of the account to the extent permitted by law.
- (13) As provided in §§ 702.304(b) and 702.305(b) of this chapter, the NCUA Board may prohibit payments of principal, dividends or interest on the uninsured secondary capital accounts established after August 7, 2000 of a “moderately capitalized”, “marginally capitalized”, “minimally capitalized” or “uncapitalized” credit union if the credit union’s net worth ratio has not increased consistent with its then-present business plan, or the credit union has failed to undertake any mandatory supervisory action prescribed in §§ 702.304(a) or 702.305(a) of this chapter. If NCUA takes this action, unpaid dividends or interest shall continue to accrue under the terms of the account to the extent permitted by law.
- (c) Accounting treatment; weighted value for purposes of recognizing capital value of secondary capital accounts.
- (1) A low-income designated credit union that issues secondary capital accounts pursuant to paragraph (b) of this section shall record the funds on its balance sheet in an equity account entitled “uninsured secondary capital account.” For such accounts with remaining maturities of less than five years, the credit union shall reflect the capital value of the accounts in its financial statement in accordance with the following scale:
- (i) Four to less than five years remaining maturity—80 percent.
 - (ii) Three to less than four years remaining maturity—60 percent.
 - (iii) Two to less than three years remaining maturity—40 percent.
 - (iv) One to less than two years remaining maturity—20 percent.
 - (v) Less than one year remaining maturity— 0 percent.
- (2) The credit union will reflect the full amount of the secondary capital on deposit in a footnote to its financial statement.

Appendix to § 701.34

Disclosures and acknowledgment in the following form must be provided to any investor in secondary capital accounts in a low-income designated credit union.

An original, signed copy must be retained by the credit union.

Disclosure and Acknowledgment

I, _____ (name of signatory), hereby acknowledge and agree to the following in my capacity as _____ (official position or title) of _____ (name of institutional investor):

- _____ (name of institutional investor) has committed _____ (amount of funds) to a secondary capital account with _____ (name of credit union).
- The funds committed to the secondary capital account are committed for a period of _____ years and are not redeemable prior to _____.
- The secondary capital account is not a share account and the funds committed to the secondary capital account are not insured by the National Credit Union Share Insurance Fund or any other governmental or private entity.

The funds committed to the secondary capital account and any interest paid into the account may be used by _____ (name of credit union) to cover any and all operating losses that exceed the credit union's reserves and undivided earnings exclusive of allowance accounts for loan losses, and in the event the funds are so used _____ (name of credit union) will under no circumstances restore or replenish those funds to _____ (name of institutional investor).

By initialing below, _____ (name of credit union) _____ and (name of institutional investor) agree that accrued interest will be:

- _____ _____ paid into and become part of the secondary capital account;
- _____ _____ paid directly to the investor;
- _____ _____ paid into a separate account from which the investor may make withdrawals; or
- _____ _____ any combination of the above provided the details are specified and agreed to in writing.

- In the event of liquidation of _____ (name of credit union), the funds committed to the secondary capital account shall be *subordinate to all other claims* on the assets of the credit union, including claims of member shareholders, creditors and the National Credit Union Share Insurance Fund.
- The NCUA may prohibit payments of principal, dividends or interest on _____ (name of credit union) uninsured secondary capital accounts established after August 7, 2000, if _____ (name of credit union) has been in operation less than 10 years and has \$10 million or less in assets and the provisions of § 701.34(b)(13) of NCUA's regulations are met, or, if _____ (name of credit union) has been in operation for 10 years or more or has more than \$10 million in assets and the provisions of § 701.34(b)(12) of NCUA's regulations are met.

(Signature)

(Official Title)