

RegTraC

Regulatory Training and Certification Program

NCUA Requirements and Guidance

Module 5 – Level 2

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Title II – Share Insurance

(Sections 1781-1790 of the U.S. Code and Sections 201-216 of the Federal Credit Union Act)

This part of the Federal Credit Union Act covers share insurance and NCUA's enforcement powers. The structure of this title is very disorganized because Congress over the years has added provisions without adding new subtitles. Even experienced credit union lawyers find it challenging to locate particular provisions in Title II. Share insurance requirements are explained in depth in section 2 of this module. This title includes:

- The conditions that state-chartered credit unions must meet to qualify for federal share insurance.
- The administration by NCUA of the National Credit Union Share Insurance Fund (NCUSIF) including insurance premium charges.
- The power of NCUA to examine all federally insured credit unions.
- Criminal and civil penalties for violation of laws concerning the safety and soundness of federally insured credit unions.
- Authority for all federally insured credit unions to offer share draft accounts, the only membership service that the FCU Act specifically authorizes for state-chartered credit unions.
- Authority for NCUA to require the involuntary merger of an insured credit union in danger of insolvency.
- A range of enforcement powers that NCUA can use against federally insured credit unions and “institution-affiliated parties” including issuance of cease-and-desist orders, removal or suspension from office, and civil money penalties.
- revision* • Requirements for enforcement of the Bank Secrecy Act’s currency transactions reporting provisions.
- NCUA’s authority to serve as the conservator or liquidating agent of an insured credit union experiencing serious problems including procedures for the payment of insured deposits.
- Special assistance from the NCUSIF, often called “208 assistance” in reference to the statutory provision that authorizes NCUA to make loans to, purchase assets from, or establish accounts in, insured credit unions experiencing difficulty.
- Authority of insured credit unions to serve as depositories of public money and fiscal agents of the U.S. government.
- Authority of NCUA to disapprove of any directors, committee members, and senior executive officers of newly chartered, federally insured credit unions and

insured credit unions experiencing problems, as determined by the most recent examination.

- Protection to employees of federally insured credit unions from discharge or employment discrimination for providing information to NCUA or to the U.S. Justice Department “regarding any possible violation of any law or regulation by the credit union or any director, officer, or employee of the credit union.”
- “Prompt corrective action.”

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Title III — Central Liquidity Facility

(Section 1795 of the U.S. Code and Sections 301-312 of the Federal Credit Union Act)

This part of the Federal Credit Union Act created the Central Liquidity Facility (CLF) in 1978, which is administered by the NCUA board. The CLF has been the “Maytag repairman” of the credit union movement for much of its 25-year existence. It was established to address the economic conditions of the 1970s when credit unions were so loaned-up that they were borrowing funds in order to address member loan demands. The CLF has had relatively few requests for its services since its inception, primarily because of the changing economic environment, but also because of the development of the corporate credit union system.

Membership in the CLF is voluntary and open to all credit unions. Credit unions may access the CLF either through direct membership or through an agent member. Agent membership is available only to corporate credit unions. When a corporate credit union becomes an agent member, its member credit unions also gain CLF access.

The CLF is authorized to lend money to credit unions for the following types of liquidity needs:

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- Short-term adjustment credit, to assist in meeting temporary requirements for funds.
- Seasonal credit, to assist in meeting seasonal needs for funds arising from expected patterns of movement in deposits and loans.
- Protracted adjustment credit, for unusual or emergency circumstances of a longer-term nature resulting from national, regional, or local difficulties.

The CLF may not lend to a credit union for the purpose of expanding the credit union’s portfolio. The CLF may also lend to the National Credit Union Share Insurance Fund (NCUSIF) or private credit union insurance funds. NCUA regulations require that the CLF take a first-priority security interest in specific assets of the credit union with a net book value at least equal to 110% of the amount owed to the CLF.

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Moreover, that 1973 IRS ruling specifically states that federal credit unions are not exempt from the “taxes” or “fees” imposed under the Airport and Airway Revenue Act of 1970, on such things as fuel surcharges and airport fees because they are not considered to be taxes but rather “are generally viewed as user charges properly applicable.”

Q. Does the United States Government stand behind the National Credit Union Share Insurance Fund (NCUSIF)?

A. Although Congress has said so on a number of occasions over the years, in 2006 the law was changed to make it very clear that the federal government stands behind bank deposit insurance and credit union share insurance. The official sign required by NCUA now explicitly states not only that funds in federally insured credit unions are insured at least to \$100,000 but also that the funds are backed by the full faith and credit of the U.S. government. *revision*

NCUA Regulations

While it is generally unnecessary for credit unions to ponder the statutory language found in the Federal Credit Union Act, it is essential that credit unions understand NCUA’s regulations in order to understand what they are authorized — and not authorized — to do. In addition, FCUs need to understand the requirements of several interpretive rulings (such as the field-of-membership requirements) and the FCU bylaws. These regulations, policies, and procedures are the focus of this module.

NCUA is an independent agency of the executive branch of the U.S. government. The Federal Credit Union Act gives the NCUA board broad authority to issue regulations and other guidance to direct the operations of federal credit unions and to assure the safe and sound operations of federally insured credit unions. When addressing issues that will have a substantial impact on credit union operations, NCUA will issue a regulation to govern the particular topic.

The list of NCUA regulations

Appendix 1-B provides a list of all NCUA regulations. This chart includes the citations to the specific regulations, which are found in NCUA’s manual entitled *Rules and Regulations*. The manual and periodic updates are provided to all

- 06-CU-13 Authentication for Internet Based Services
- 06-CU-14 Bank Secrecy Act (BSA)/Anti-Money Laundering (AML) Manual Interagency Outreach
- 06-CU-15 Credit Union Financial Trends for June 2006
- 06-CU-16 Interagency Guidance on Nontraditional Mortgage Product Risk
- 06-CU-17 Recently Enacted Regulatory Relief Legislation
- 06-CU-18 Revisions to the Official NCUA (Insurance) Sign
- 06-CU-19 5300 Call Report Modifications

All of NCUA’s Letters to Credit Unions back to 1996 are found on the agency’s Web site under “Reference Information.” A very helpful addition is that the Web site list includes a column telling you if the letter is “active” (still current, accurate, and relevant), “inactive” (outdated, but useful from an historical or reference perspective), or “cancelled.” All but one are labeled “active.”

Regulatory Alerts

Since 1996, NCUA has been issuing “Regulatory Alerts” to advise all federally insured credit unions about regulatory changes by other federal agencies that affect credit union compliance requirements, and to publish joint advisories that NCUA has developed with other federal banking agencies about emerging problems. Similar to the numbering of IRPSs, the Regulatory Alerts are numbered by year and then sequentially. Since 1996 NCUA has issued about 100 Regulatory Alerts. All of the Alerts since 1996 can be found on NCUA’s Web site under “Reference Information.” To give you an idea of the types of topics covered, the Alerts issued in the first half of 2007 were:

- revision* 07-RA-01 Home Mortgage Disclosure Act (HMDA) Data Collection Requirements for 2007
- 07-RA-02 Submission of 2006 Data to comply with HMDA
- 07-RA-03 Suspicious Activity Report Depository Institution Form
- 07-RA-04 The SAR Activity Review – Trends, Tips & Issues
- 07-RA-05 FinCEN Interpretive Guidance – Suspicious Activity Reporting Supporting Documentation

Vital records

According to NCUA, vital records include, at a minimum, the following as of the most recent month end:

- A list of share, deposit, and loan balances for each member's account which:
 1. show each balance individually identified by a name or number;
 2. list multiple loans of one account separately; and
 3. contain information sufficient to enable the credit union to locate each member, such as address and telephone number, unless the board of directors determines that the information is readily available from another source.
- A financial report, which lists all of the credit union's asset and liability accounts and bank reconcilements.
- A list of the credit union's financial institutions, insurance policies, and investments. This information may be marked "permanent" and stored separately, to be updated only when changes are made.

The credit union's board of directors is responsible for establishing a vital records preservation program within six months after its insurance certificate is issued. This program must contain procedures for storing duplicate vital records at a "vital records center" and must designate the staff member responsible for carrying out those duties. A vital records center is defined as a storage facility at any location far enough from the credit union's offices to avoid the simultaneous loss of both sets of records in the event of disaster.

Records must be stored every three months, within 30 days after the end of the three-month period. Previously stored records may be destroyed when the current records are stored. The credit union must also maintain a records preservation log showing:

- what records were stored,
- where they were stored,
- when they were stored, and
- who sent them for storage.

Credit unions that have some or all of their records maintained by an off-site data processor are considered to be in compliance with the storage requirements for those records.

See Appendix A to NCUA Part 749 for guidance on the appropriate length of time credit unions should retain various types of operational records. A copy is included in this section as Appendix 3-B.

Charitable contributions

Since 1979, NCUA has had a policy allowing charitable giving by federal credit unions within reasonable bounds. In 1999, NCUA moved this policy into its official regulations, as Section 701.25.

NOTE: In the spring of 2007, NCUA proposed to change the requirement for maintaining member account information current from end of month to currents of the most recent business day. Final action on this requirement is expected before the end of 2007.

- Select a date for the verification that is unknown to staff, since acting on a surprise basis is important so that an insider cannot manipulate the records.

Record retention requirement

Section 715.8(c), NCUA's Rules and Regulations requires that the supervisory committee retain the records of each verification of members' accounts until it completes the next verification of accounts.



RECORD RETENTION

Failure to perform the required account verification

The NCUA could consider failure to do the supervisory committee's verification as a "serious and persistent recordkeeping deficiency" and subject the credit union to the mandatory outside audit requirement in Section 715.12 of the agency's regulations. Or the agency could pursue one of the administrative remedies outlined earlier in this module.

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Figure 5.4 provides a list of questions that examiners can be expected to ask about the credit union's verification of accounts.

Oversight Responsibilities of the Supervisory Committee

The supervisory committee's oversight authority over the board of directors

As noted at the beginning of this section, the supervisory committee can be viewed as the "watchdog" of the credit union. The audit committees at state-chartered credit unions will have to review their state rules to determine what oversight responsibilities they have. The Federal Credit Union Act gives the supervisory committee of a federal credit union specific authority to suspend any board member, officer of the federal credit union, or member of the credit committee. The law does not itemize what the reason for suspension must be, but obviously suspension is a serious matter that must be thoroughly considered before action is taken. A suspension requires a unanimous vote of the FCU's supervisory committee (excluding any director on the supervisory committee who is the subject of the committee's suspension vote).

If the supervisory committee of a federal credit union suspends someone, it is required by law to call a special meeting of the members to act on the suspension, and the meeting must be held within seven to 14 days after the suspension. The person being suspended must be given an opportunity to present a defense and be given due process.

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