

CUNA REGTRAC

DEPOSIT ACCOUNT REGULATIONS



TABLE OF CONTENTS

Legal Review	xi
Acknowledgments	xi
Section 1 — Truth In Savings/NCUA Part 707	1-1
Overview	1-2
Authority.	1-2
Purpose	1-2
Coverage.	1-2
NCUA Staff Commentary	1-2
Credit unions.	1-2
Covered accounts.	1-2
Accounts not covered by TISA	1-3
Members and potential members.	1-3
Rules Affecting Credit Union Accounts	1-4
The nature of dividends	1-4
Interest-bearing accounts	1-4
Rules governing account terminology	1-4
Account Disclosures	1-7
Oral disclosures to rate inquiries	1-7
Account-opening disclosures.	1-8
Account opening	1-9
Upon request	1-9
Content of TISA account disclosures	1-10
Periodic Statement Disclosures	1-13
General rules.	1-13
Content of periodic statement disclosures.	1-13
Special rules for noncalendar month crediting.	1-15
Overdraft Privilege Plans	1-15
Account-opening disclosures.	1-16
Periodic statement disclosures	1-16

Advertising disclosures	1-16
Prohibiting misleading advertising	1-17
Disclosure of account balances	1-18
Disclosures upon Maturity and Changes in Terms	1-18
Renewal notices for rollover term share accounts	1-18
Maturity notices for nonrollover term share accounts	1-19
Change-in-terms notice	1-19
Advertising	1-20
Scope of the advertising rules	1-20
Prohibition on misleading or inaccurate advertising	1-20
Disclosure requirements	1-21
Representative example	1-22
APY disclosures	1-22
Bonus disclosures	1-23
Credit union newsletters, lobby signs, and special media	1-24
Electronic Disclosures	1-24
State Law, Model Clauses, Enforcement	1-25
Pre-emption of state law	1-25
Model clauses and sample forms	1-25
Administrative enforcement	1-25
Record retention	1-25
Appendix 1-A — Truth In Savings Disclosure for Savings and Checking Accounts	1-27
Appendix 1-B — Truth In Savings Disclosure for Term Share/Certificate Accounts	1-30
Appendix 1-C — Account Renewal Notice	1-32
Appendix 1-D— Account Maturity Notice	1-34
Quiz/Study Guide	1-35
Answer Key	1-39
Section 2 — Regulation D Reserve Requirements of Depository Institutions	2-1
Background	2-2
Monetary Reserve Requirements	2-2

Interest on Reserve Deposits	2-3
Filing Reports.	2-3
Computation and Maintenance Periods	2-4
Weekly reporting	2-4
Quarterly reporting.	2-4
Calculating Reservable Liabilities and Required Reserves	2-5
Establishing a Reserve Account	2-6
Characteristics of Accounts	2-6
Transaction accounts	2-6
Savings deposits and money market deposit accounts	2-7
Time deposits	2-8
Appendix 2-A — FR 2900 Report of Transaction Accounts, Other Deposits, and Vault Cash	2-10
Appendix 2-B — FR 2910a Annual Report of Total Deposits and Reservable Liabilities	2-13
Quiz/Study Guide	2-15
Answer Key	2-17
Section 3 — Regulation E: Electronic Funds Transfer	3-1
Purpose, Scope, and Exemptions	3-2
Purpose	3-2
Scope.	3-2
Exemptions.	3-3
General Disclosure Requirements	3-5
Disclosure of Initial Terms and Conditions	3-5
Initial disclosure delivery	3-5
Content of initial disclosures.	3-5
Subsequent EFT Documentation.	3-8
Change in terms	3-8
Annual error notification.	3-8
Documentation of transfers.	3-8
Disclosures at ATMs.	3-9

Consumer Authorization for Electronic Check Conversions	3-9
Model clauses for authorizing one-time EFT using information from a check	3-10
Preauthorized Transfers	3-10
Transfers to a member’s account	3-10
Transfers from a member’s account	3-11
Error-Resolution Procedures	3-11
Error notification by member	3-12
Error investigation	3-12
Extent of the investigation	3-13
Notification of resolution to the member	3-13
Member Liability for Unauthorized Transfers	3-14
Preconditions to asserting liability	3-15
Liability after loss or theft	3-15
Unauthorized use reflected on periodic statement	3-16
Different rules for Visa and MasterCard debit cards	3-16
Payroll cards	3-17
Periodic statements	3-17
Initial disclosures	3-17
Model clauses for financial institutions offering payroll card accounts	3-18
Liability limitations & error reporting	3-19
Electronic Communication	3-19
Opt-in notice for ATM and one time debit card overdrafts	3-20
Four step opt-in requirement	3-20
Affirmative consent and revocation	3-21
Opt-in notice	3-21
Exception to the notice and opt-in requirements	3-22
Cannot condition opt-in or vary account terms	3-22
Gift cards	3-22
Restrictions on dormancy, inactivity, or service fees	3-23
Special Credit Union Rules and Concerns	3-24

Issuance of access devices	3-24
Compulsory use per Regulation E §205.10(e)	3-24
Waiver of rights	3-25
Record retention	3-25
State law	3-25
Remittance transfers	3-25
Appendix 3-A — EFT Agreement and Disclosure.	3-32
Appendix 3-B — Model Form for Initial and Annual Error-Resolution Notice per Regulation E §§205.7(b)(10) and 205.8(b)	3-41
Appendix 3-C — Model Form for Error-Resolution on Periodic Statements per Regulation E §205.8(b)	3-42
Appendix 3-D — Automatic Transfer Authorization	3-43
Quiz/Study Guide	3-44
Answer Key	3-49

**Section 4 — Regulation CC: Availability of Funds
and Collection of Checks. 4-1**

Funds Availability Requirements.	4-2
Next-day availability requirements	4-2
Overview of check-availability schedule rules	4-6
Exceptions to availability schedules	4-8
General rules.	4-13
Deposits available at the start of a business day.	4-14
Payment of interest/dividends	4-14
Disclosure and Notice Requirements.	4-14
Disclosure standards	4-15
Initial disclosures	4-16
Subsequent disclosures	4-17
Notice of case-by-case holds	4-18
Safeguard exception hold notice	4-18
Notice on deposit slips	4-20
Notice at locations where credit union employees	

accept deposits	4-20
Notice at ATMs	4-20
The Collection and Return Process	4-21
Overview of the forward collection and return system	4-21
Expeditious return of check — paying and returning credit union’s responsibilities	4-22
Depository credit unions — responsibility for returned checks.	4-26
Notice of nonpayment	4-28
Warranties by the paying credit union and the returning credit union.	4-29
Endorsement Standards.	4-30
Applicability of endorsement standards	4-31
Depository credit union endorsement	4-31
Collecting credit union endorsement	4-32
Returning credit union endorsement	4-33
Carbon bands and other preprinted information.	4-39
Liabilities and Defenses.	4-33
Liability for return-check delays.	4-33
Liability for handling checks	4-34
State Law.	4-34
Civil Liabilities and Defenses	4-35
Civil liability to individuals	4-35
Civil liability for class actions	4-35
Bona fide errors defense.	4-36
Limitation on actions	4-36
Reasonable reliance defense.	4-36
Return check liability	4-36
Administrative enforcement	4-38
Record retention	4-38
Check 21 amendments.	4-38
Expedited recredit	4-40
Consumer awareness disclosures	4-40

What is a “Funds Transfer” Under UCC 4A and Reg J?	6-3
Funds Transfers Not Covered by Reg J and/or UCC 4A	6-5
The Credit Union as Receiver	6-6
Security procedures	6-6
Notice of rejection	6-8
Credit Unions as Beneficiary’s Banks	6-8
Protecting the Rights of the Credit Union in Funds Transfers	6-9
Cutoff time	6-9
Choice of law.	6-10
Member’s liability for beneficiary number error or routing number error	6-10
Choice of accounts.	6-11
Notification of credits.	6-11
Provisional payment — ACH	6-12
Wire Transfer Policy Considerations	6-12
UCC 4A and Reg J — Issues for Follow Up.	6-14
Remotely Created Checks	6-14
Record Retention	6-15
Appendix 6-A — Sample Wire Transfer Request	6-16
Appendix 6-B — Sample Wire Transfer Agreement	6-17
Appendix 6-C — Sample Wire Transfer Notice	6-21
Quiz/Study Guide	6-23
Answer Key	6-25

**Section 7 — Regulation II: Debit Card Interchange
Fees and Routing 7-1**

Interchange Fee Limitations.	7-2
Small Issuer Exemption.	7-2
Network Exclusivity and Routing Requirements	7-3
Network Exclusivity	7-3
Routing	7-3

Legal Review

The RegTraC books are designed to provide general information regarding regulations affecting credit unions. They are not intended to substitute for legal advice based upon specific facts in any individual case, and credit unions with regulatory concerns are advised to consult with attorneys or specialists to obtain advice directed to their specific circumstances.

With respect to the content of the RegTraC books, neither Credit Union National Association (CUNA) nor its employees — nor any of its affiliates or their respective employees — make any express or implied warranty or assume any legal liability or responsibility for the accuracy, completeness, merchantability, fitness for a particular purpose or usefulness of any information. Neither do these books constitute an endorsement, recommendation or warranty of any product, service or provider mentioned herein. The views and opinions of the authors do not necessarily reflect those of CUNA. The books shall not be used for advertising or product endorsement purposes. To the maximum extent permitted by law, CUNA shall not be liable for any damages whatsoever arising out of the use, or inability to use, the books.

Material contained in the books is protected by copyright law. No part of any copyrighted materials may be reproduced or distributed without the prior written permission of the owner.

If you have further questions, please contact CUNA at 800-356-9655, ext. 4249, or e-mail RegTraC@cuna.com.

Acknowledgments

In developing this certification program, comments and ideas were solicited from an extensive number of experienced league and credit union people throughout the U.S. This network of credit union-oriented reviewers provided a wealth of information used in the production of this book. True to credit union philosophy, the reviewers volunteered their efforts. Their work was time-consuming and tremendously helpful. The authors and publisher of this book wish to acknowledge their contributions with great appreciation.

Contributors include:

- Andrea Stritzke, PolicyWorks
- Jeff Andersen, PolicyWorks
- Jennifer Anderson-Kapke, PolicyWorks
- Jeremy Smith, PolicyWorks



Section 1 – Truth In Savings/NCUA Part 707

Overview

Authority

The Truth In Savings Act of 1991 (TISA) was enacted in December 1991. The statute directed the Federal Reserve Board (FRB) to implement regulations for all depository institutions except credit unions. It also directed the National Credit Union Administration (NCUA) to issue regulations for state-chartered and federally chartered credit unions “substantially similar” to the FRB Regulation DD (Reg. DD), taking into account the unique nature of credit unions and the limitations under which they may pay dividends on member accounts.

Purpose

TISA is basically a disclosure law, the purpose of which is to enable consumers (credit union members and potential members) to make meaningful comparisons of deposit accounts among depository institutions.

Truth In Savings imposes special disclosure requirements at five different points in the life cycle of a deposit account: 1) preaccount opening, 2) account opening, 3) periodic statements, 4) changes in account terms and account maturity, and 5) advertising.

Coverage

Credit unions are required to disclose to members fees, dividend and interest rates, and other terms in connection with an account before an account is opened, upon request, on periodic statements, and upon subsequent events.

TISA also establishes rules for payment of dividends or interest and advertising rules for deposit accounts.

NCUA Staff Commentary

On November 8, 1994, NCUA issued its Official Staff Interpretation (Commentary) to the Truth In Savings Rule (Part 707) incorporating much of the Supplementary information issued with Part 707 and addressing additional compliance questions.

Good-faith compliance with NCUA’s commentary affords credit unions protections from civil liability penalties.

Credit unions

NCUA’s regulation applies to all federal and state-chartered credit unions whether federally or privately insured, except corporate credit unions. (Regulation DD does not directly apply to credit unions.)

Covered accounts

The following are covered accounts:

- Traditional accounts such as: share, share draft, checking, and time deposits.

- Dividend-bearing and nondividend-bearing accounts.
- Insured and uninsured accounts (for example, a jumbo certificate account in excess of \$100,000).
- IRA accounts.
- Uniform Gifts to Minors Act (UGMA) or Uniform Transfers to Minors Act (UTTMA) accounts.
- Accounts held by deposit brokers (only for purposes of advertising rules).
- Accounts of natural persons who, in their professional capacity, hold the account for another (for example, attorney-client trust accounts and trust accounts opened by a trustee as a result of a formal written trust agreement).
- Nondeposit type accounts, such as mortgage escrow accounts, construction loan accounts, discount brokerage accounts, and overdraft line of credit accounts.

Accounts not covered by TISA

The rule does **not** cover the following accounts:

- Accounts held by an unincorporated nonbusiness association of natural persons (club or organization accounts). Originally, NCUA had included club accounts opened after the effective date as accounts covered by Truth In Savings.
- In the Riegle Community Development and Regulatory Improvement Act of 1994, Congress amended TISA to exempt unincorporated association accounts.

Note: While club accounts are not covered, credit unions may find it easier to treat these accounts as covered accounts rather than maintaining two different procedures, one for club accounts and another for all other accounts.
- Sole proprietorship accounts because such accounts are held for a business purpose.

Members and potential members

NCUA defines account coverage for members by a consumer vs. business purpose account distinction.

The term **member** under the final rule includes the following persons holding an account primarily for personal, family, or household (consumer) purposes: (1) natural person (individual) members who hold a consumer purpose account, and (2) a natural person nonmember (individual joint owner). Members holding an account for a purpose other than primarily for personal, family, or household (consumer) purposes and members holding an account for another in a professional capacity would not be covered.

For example, members holding accounts for corporations, partnerships and, sole proprietorships or other business purposes would not be covered. Similarly, attorney-client trust accounts and certain trust, estate, and court-ordered accounts would not be covered.

The term **potential member** is important as the credit union must give certain disclosures to “potential members.” The term includes a natural person with-

in the credit union’s field of membership or one eligible to become a member.

Note: Similar to the coverage issues for “accounts,” credit unions may also consider treating all members as covered members including members with business accounts. Again, compliance is easier with one set of account procedures.

Rules Affecting Credit Union Accounts

The nature of dividends

One of the key differences between the Truth In Savings rules for banks and credit unions is the unique limitation on credit unions’ payment of dividends.

Credit union dividends comprise the portion of available current and undivided earnings of the credit union, which, by declaration of the board of directors, is set aside for distribution to members after required transfers to reserves.

Dividends cannot be guaranteed and members have no right to a dividend, even on share certificates, unless available earnings exist and dividends are, in fact, declared for such accounts.

The term **dividends** means any declared or prospective earnings on a member’s shares in a credit union to be paid to a member or a member’s account. The term excludes bonuses, extraordinary dividends, and similar incentives. The **dividend period** is the time period, set by the credit union board, at the end of which dividends are earned and credited. The dividend period may be different for different types of accounts (for example, weekly, monthly,

and quarterly). For some certificate accounts, the dividend period may be at maturity. Credit union dividends are not guaranteed.

Note: In the commentary, NCUA makes the distinction between dividend- and interest-bearing accounts by emphasizing that federal credit unions are only permitted to offer dividend-bearing accounts and only certain state-chartered credit unions may offer interest-bearing accounts.

Interest-bearing accounts

In some states state-chartered credit unions are permitted to offer **interest-bearing** accounts pursuant to state law; thus, the rule includes rules for payment of interest. (Check with your state League to determine whether your state allows state-chartered credit unions to offer interest-bearing accounts.) The term **interest** means any payment to a member or to a member’s account for use of funds in the account of a state-chartered credit union under state law. For purposes of the rule, the term “interest” is generally substituted for the term “dividends.” Like the term “dividends,” “interest” excludes bonuses and similar incentives.

Rules governing account terminology

TISA requires the use of certain basic account terminology to achieve meaningful and uniform understanding of accounts. In addition to the TISA required terms, NCUA has imposed additional account terminology requirements.