

CUNA REGTRAC

NCUA REQUIREMENTS AND GUIDANCE



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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.

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SECTION 1 – OVERVIEW OF NCUA’S REGULATIONS AND SUPERVISORY AUTHORITY





Section 1 – Overview of NCUA’s Regulations and Supervisory Authority

Credit unions are subject to many federal laws and regulations that are discussed throughout the RegTraC books. This book focuses on the laws, regulations, policies, and procedures required by the National Credit Union Administration (NCUA), although a few of the regulations are discussed in detail in other books, as appropriate. All of NCUA’s regulations apply to federal credit unions. Selected regulations apply also to federally insured, state-chartered credit unions (FISCU).

In order to track down the particular provisions of laws, regulations, or agency policies and understand the compliance requirements, it is very important to have an overall understanding of the different NCUA documents governing credit union operations. This section provides an overview.

Federal Laws, Regulations, and Other Documents That Control Credit Union Operations

The Federal Credit Union Act

The importance of the Federal Credit Union Act

NCUA’s authority to issue regulations is established by the Federal Credit Union (FCU) Act, the compilation of federal laws that specifically apply to credit unions. The FCU Act was first passed by Congress in 1934 and has

been amended a number of times since then. The FCU Act is defined in the preamble as “An Act to establish a Federal Credit Union System, to establish a further market for securities of the United States and to make more available to people of small means credit for provident purposes through a national system of cooperative credit, thereby helping to stabilize the credit structure of the United States.” In order to change the language of the Act and to become law, both the U.S. House of Representatives and the U.S. Senate must pass identical bills, and the president must then sign the legislation to make it a public law.

To appreciate the importance Congress and the president have to the operations of credit unions, consider some of the significant amendments to the FCU Act in the past 30 years:

- March 1970 — Creation of the “[National Credit Union Administration](#)” as an independent agency run by an administrator, replacing the Bureau of Federal Credit Unions, which was under the U.S. Department of Health, Education, and Welfare.
- October 1970 — Creation of federal share insurance.
- November 1978 — Creation of the three-member NCUA board to run the agency and establishment of the “National Credit Union Central Liquidity Facility.”

NOTE:

This section applies to all federally insured credit unions.

- March 1980 — Increase of the (then)12% interest-rate limit that could be charged by FCUs on loans, increase of share insurance from \$40,000 to \$100,000, and phasing out the cap on dividend rates.
- August 1989 — Increase in NCUA’s enforcement powers and the penalties that can be imposed on federally insured credit unions experiencing problems.
- August 1998 — Restoration of NCUA’s authority to allow multiple-group fields of membership.
- May 2009 – Creation of a “Temporary Corporate Credit Union Stabilization Fund.” (A “corporate credit union” is a credit union that only provides services to other credit unions, not to consumers.)

The August 1998 amendments to the FCU Act are known as the “Credit Union Membership Access Act” (CUMAA). Credit unions became the most active they had ever been in the legislative process in 1997 and 1998 in order to persuade Congress to pass H.R. 1151 (the bill number given by the House of Representatives when the credit union bill was first introduced). The purpose of H.R. 1151 was to reverse the 1998 U.S. Supreme Court ruling that stated NCUA lacked the authority under the Federal Credit Union Act to allow multiple groups to be served by the same federal credit union.

Persuading Congress to pass a simple bill is rarely an easy process, and CUMAA is an example of Congress trying to address competing interests, in this case the banking industry vs. the credit

union movement. What started as a two-page bill ended up upon passage as a law dozens of pages in length. Section 5 of this book addresses CUMAA and NCUA’s field-of-membership policies in depth.

The structure of the Federal Credit Union Act

The FCU Act is part of the massive United States Code of all the federal laws that cover taxation, environmental protection, bankruptcy, consumer disclosures, criminal laws, and the like. Title 12 of the U.S. Code covers all the federal banking laws; the FCU Act starts at 12 USC 1751 and runs through 12 USC 1795. NCUA publishes an 80-page booklet, “The Federal Credit Union Act,” which contains the full FCU Act with an index. The Act is also found on NCUA’s website. See Appendix 1-A of this section for information on finding NCUA Resources.

Almost every key provision affecting the operations of credit unions in the FCU Act is explained and elaborated upon by the NCUA board. The FCU Act gives the NCUA board authority to issue regulations, bylaws, and guidelines to implement the provisions of the law. Therefore, it is not essential that credit unions become intimately familiar with the language of the Federal Credit Union Act. However, you should have a general understanding of what is contained in the federal law in order to understand where NCUA may, and may not, have flexibility to allow a particular service.

The FCU Act is divided into three parts (called “titles”). In addition to the U.S. Code citations described above, the FCU Act is also sequentially numbered.

You will get a feel for the parallel citations in the numbered references below.

Title I – General Provisions

(Sections 1752-1772 of the U.S. Code and Sections 101-131 of the Federal Credit Union Act)

This part of the FCU Act covers a wide range of provisions, establishing the duties and powers of the NCUA and, in general terms, the powers of federal credit unions (FCUs) as well as restrictions on their operations. Title I covers:

- The organization and powers of the three-member NCUA board. Board members are nominated by the president, subject to confirmation by the U.S. Senate. The president designates one as chairperson. Each board member serves for a six-year term and cannot be reappointed. No more than two members of the board can be from the same political party.
- The organization of a federal credit union as a corporation.
- The authority of NCUA to assess each FCU an annual operating fee to cover the costs of running the agency.
- The authority of NCUA to supervise and examine FCUs.
- The powers of an FCU — a very important list which is summarized in [figure 1.1](#).
- Limitations on member business loans.
- The requirement that NCUA issue FCU bylaws.
- Field-of-membership authority and limitations.
- The requirement that every FCU hold a membership meeting at least annually.
- The requirement that the FCU be managed by a board of directors, a supervisory committee, and, where the bylaws so provide, a credit committee.
- The requirement that the board of directors select board officers, as specified in the FCU's bylaws, with the limitation that only one member of the board of directors can be compensated as an officer of the board.
- Powers and duties of the FCU's board of directors.
- Powers and duties of the credit committee, if provided for in the FCU's bylaws.
- Powers and duties of the supervisory committee.
- The authority to pay dividends after providing for required reserves.
- The expulsion of members.
- Accounts of minors.
- The powers of NCUA to:
 - ✓ Issue regulations to carry out the law.
 - ✓ Issue regulations to govern corporate credit union operations.
 - ✓ Handle involuntary and voluntary FCU liquidations.
 - ✓ Require FCUs to keep books and records as the agency specifies.
 - ✓ Require FCUs to carry fidelity bond coverage.
- The authority of FCUs to hold Treasury Department tax and loan accounts.

- The tax exemption of FCUs.
- The possible allotment of space in federal buildings for FCUs requiring that 95% of the members served by the FCU office be federal employees, federal retirees, or their families.
- The procedures to be followed to convert from a federal to a state-chartered credit union or from a state-chartered to a federal credit union.
- The NCUA board's authority to manage the Community Development Revolving Loan Fund for credit unions.
- The possible forfeiture of the credit union's charter for money-laundering offenses.

The most important part of Title I of the Federal Credit Union Act affecting the day-to-day operations of federal credit unions is the list of specific powers in Section 1757. These powers are summarized in figure 1.1 and form the basis of many of NCUA's regulations.

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 book. This title includes:

- The conditions that state-chartered credit unions must meet to qualify for federal share insurance. Share insurance coverage has been permanently increased to \$250,000.
- The administration by NCUA of the National Credit Union Share Insurance Fund (NCUSIF) including insurance premium charges.
- The administration of the Temporary Corporate Credit Union Stabilization Fund.
- 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.
- 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

Figure 1.1

Summary of the Powers Assigned a Federal Credit Union by the Federal Credit Union Act

Note: State-chartered credit unions have to look to their state laws and regulations to determine their authorized powers. In most cases, the authorized powers are similar to those enumerated below. With the exception of share draft authority, the FCU Act does not grant powers to state-chartered credit unions.

Federal credit unions are authorized by law to exercise the following powers:

- To make contracts, to sue and be sued, and to use a corporate seal.
- To purchase, hold, and dispose of property necessary or incidental to its operations.
- To make loans to its members, subject to extensive limitations on types, maturities, interest, and the like (including the FCU usury ceiling, currently set by the NCUA Board at 18%).
- To receive funds from members, other credit unions, government agencies — or in the case of designated credit unions serving low-income areas — nonmembers; and to hold funds in share accounts, share certificates, or share draft accounts.
- To invest its funds, but only in investments itemized in the Act.
- To make deposits in federally insured banks with certain exceptions for credit unions operating overseas.
- To borrow from any sources, up to 50% of paid-in capital and unimpaired surplus (including the FCU usury ceiling, currently set by the NCUA Board at 18%)
- To levy late charges for late loan payments.
- To impress and enforce a lien against a member's account to the extent of any loan made, often referred to as the "statutory lien."
- To sell travelers checks and money orders, and other money transfer instruments, to cash checks and money orders, to provide check-cashing services, and to provide wire transfer services to members and to other people who are within the field of membership.
- To purchase, sell, or pledge eligible obligations of members and to purchase from liquidating credit unions notes of members, up to an aggregate of 5% of unimpaired capital and surplus.
- To sell credit union assets or purchase another credit union's assets or liabilities.