

**7535-01-U**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Parts 700, 701, 741 and 750**

**RIN 3133-AD97**

**Definition of Troubled Condition**

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** NCUA proposes to amend the definition of “troubled condition” as that term appears in §701.14 and elsewhere in NCUA’s regulations. Generally, under the current definition, only a state supervisory authority (SSA) may declare a federally insured, state-chartered credit union (FISCU) to be in “troubled condition.” The proposal expands the definition to permit either NCUA or an SSA to declare a FISCU to be in “troubled condition.”

**DATES:** Comments must be received on or before [Insert date 60 days following date of publication in the FEDERAL REGISTER].

**ADDRESSES:** You may submit comments by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- NCUA Web Site: <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx>. Follow the instructions for submitting comments.

- E-mail: Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name] – Comments on Notice of Proposed Rulemaking for Parts 700, 701, 741 and 750” in the e-mail subject line.

- Fax: (703) 518-6319. Use the subject line described above for e-mail.

- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- Hand Delivery/Courier: Same as mail address.

Public Inspection: You can view all public comments on NCUA’s Web site at <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx> as submitted, except for those we

cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

**FOR FURTHER INFORMATION CONTACT:** Steven W. Widerman, Staff Attorney, Office of General Counsel, at the above address or by telephone: (703) 518-6557.

**SUPPLEMENTARY INFORMATION:**

**I. BACKGROUND**

1. Notification and Disapproval of Change in Officials. In 1989, the Financial Institutions Reform, Recovery and Enforcement Act, Pub. L. No. 101-73, 103 Stat. 183 (1989), amended the Federal Credit Union Act (the Act) to require a federally insured credit union, under two conditions, to notify NCUA prior to adding or replacing any individual serving as a member of the board of directors or of a committee, or employed as a senior executive officer (together, officials). 12 U.S.C. 1790a. One condition is if the insured credit union has been chartered less than 2 years. 12 U.S.C. 1790a(a)(1). The other condition is if the insured credit union "is in troubled condition, as determined on the basis of such credit union's most recent report of condition or report of examination." 12 U.S.C. 1790a(a)(2).

An insured credit union that meets either condition may not add or replace an official if the NCUA issues a Notice of Disapproval in response to a notification of a change in officials. 12 U.S.C. 1790a(b). NCUA may disapprove an individual when “the competence, experience, character, or integrity of the individual . . . indicates that it would not be in the best interests” of the credit union’s members or the public for the individual to serve. 12 U.S.C. 1790a(e). The credit union may appeal the disapproval to the NCUA Board. 12 CFR 747.904.

2. Current Definition of “Troubled Condition”. To implement the notification requirement, the Act required NCUA to prescribe by regulation a definition for the term “troubled condition.” 12 U.S.C. 1790a(f). Since 1990, the NCUA Board has defined a natural person credit union in “troubled condition” as either: (1) a federal credit union that has been assigned a “4” or “5” composite CAMEL rating by NCUA; (2) a FISCU that has been assigned a “4” or “5” composite CAMEL rating by its SSA; (3) a FISCU that has been assigned a “4” or “5” composite CAMEL rating by NCUA based on core workpapers received from an SSA; or (4) a federal credit union or FISCU that has received special assistance under sections 208 or 216 of the Act to avoid liquidation. 12 CFR 701.14(b)(3); 55 FR 43086 (Oct. 26, 1990).

In 1999, the NCUA Board adopted a separate definition of “troubled condition” for corporate credit unions in order to conform to the Corporate Risk Information System (CRIS). 64 FR 28715 (May 27, 1999). Under that definition, a corporate credit union that is in “troubled condition” is either: (1) a corporate federal credit union that is assigned a

“4” or “5” CRIS rating by NCUA in either the Financial Risk or Risk Management composites; (2) a corporate FISCU that is assigned a “4” or “5” CRIS rating by its SSA in either the Financial Risk or Risk Management composites or, if the state has not adopted CRIS, is assigned a “4” or “5” composite CAMEL rating by its SSA; (3) a corporate FISCU that is assigned a “4” or “5” CRIS rating in either the Financial Risk or Risk Management composites by NCUA based on core workpapers received from an SSA in a state that does not use either the CRIS or CAMEL rating systems; or (4) a corporate federal credit union or corporate FISCU that has received special assistance under sections 208 or 216 of the Act to avoid liquidation. 12 CFR 701.14(b)(4).

The “troubled condition” definitions for natural person credit unions and corporate credit unions have until now remained unchanged through several modifications to other parts of §701.14,<sup>1</sup> and the definitions have since been incorporated by reference in parts 711, 741, 747 and 750 of NCUA regulations.

## **II. PROPOSED RULE**

### **1. Part 701 – Proposed Definition of “Troubled Condition”.**

The proposed amendments to the definition of “troubled condition” primarily affect natural person FISCUs and corporate FISCUs. Under current §701.14(b), the CAMEL or CRIS rating assigned by an SSA alone determines if a FISCU is in “troubled condition.” 12 CFR

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<sup>1</sup> 59 FR 36042 (July 15, 1994) (change of NCUA address); 60 FR 31911 (June 19, 1995) (correcting U.S. Code citation); 66 FR 65622 (Dec. 20, 2001) (substitution of new §216 for repealed §116 of the Act); 69 FR 62562 (Oct. 27, 2004) (commencement of service while notification is pending); 75 FR 34620 (June 18, 2010) (changed “Camel” to “CAMEL”).

701.14(b)(3)(i)(B), 701.14(b)(4)(i)(B). The proposed rule would define a FISCU as in “troubled condition” not just when its SSA assigns it a “4” or “5” composite CAMEL rating or a “4” or “5” CRIS rating in either the Financial Risk or Risk Management composites, but when *either* its SSA or NCUA assigns such a rating.

As administrator of the National Credit Union Share Insurance Fund (Fund), the NCUA Board is responsible for taking proactive steps to protect the Fund. NCUA is uniquely positioned to observe national trends in the credit union industry that can affect the Fund. For example, NCUA has seen an increase in the number of credit unions with assets between \$250 million and \$500 million that have experienced some degree of financial stress. In response to this monitoring, NCUA has increased the number of joint FISCU examinations in which it participates with SSAs. Previously, NCUA generally would only participate in joint examinations of FISCUs with assets over \$500 million. More recently, NCUA has begun participating in joint examinations of FISCUs over \$250 million. As a result, the number of hours NCUA examiners spend participating in joint examinations has nearly doubled. The NCUA Board emphasizes, however, that only the time spent on joint examinations has doubled, not the number of FISCUs experiencing difficulties.

Statistics indicate that in approximately 2 to 4 percent of all joint FISCU examinations, either the variation between NCUA’s CAMEL rating and that given by the applicable SSA made the difference between a troubled versus an untroubled FISCU (*i.e.*, a “4” versus a “3”), or the SSA’s troubled rating was *lower* than that given by NCUA (*i.e.*, a “5” instead of a “4”). These statistics show that disagreement between an SSA and NCUA on a FISCU

rating could result from either regulator issuing the higher or lower score. When the variation in scores determines whether a FISCU is troubled versus untroubled, it is significant from a supervisory perspective.

The primary purpose of the proposal is to guard against this ratings discrepancy as a precaution to protect the Fund. Expanding the definition of “troubled condition” as proposed enhances the likelihood that problems in a particular FISCU will be identified and corrected because it permits the full utilization of the resources of both the related SSA and the NCUA. NCUA’s national perspective and an SSA’s in-depth familiarity with local trends complement each other in that effort.

The proposal also makes some technical corrections to §701.14. For example, §§701.14(b)(3)(ii) and 701.14(b)(4)(ii) of the current rule also define a federally insured credit union as in “troubled condition” if it “has been granted assistance as outlined under Sections 208 or 216 of the Federal Credit Union Act.” 12 CFR 701.14(b)(3)(ii), 701.14(b)(4)(ii). The citation to section 216 of the Act, 12 U.S.C. 1790d, is inapplicable because it does not pertain to assistance to credit unions.<sup>2</sup> Accordingly, the proposed rule modifies this “troubled condition” criterion by deleting the reference to section 216 of the Act, while preserving the reference to assistance under section 208 of the Act. 12 U.S.C. 1788.

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<sup>2</sup> Section 116 of the Act [reserve transfers], 12 U.S.C. 1762, the predecessor to section 216 of the Act [prompt corrective action], 12 U.S.C. 1790d, was repealed in 1998. Pub. Law No. 105-219, §301(g)(3), 112 Stat. 913, 931 (1998). In 2001, the citations to repealed section 116 of the Act in §701.14 were replaced with references to section 216 of the Act. 66 FR 65622 (Dec. 20, 2001). Neither section 116 nor 216 of the Act, however, pertain to providing assistance to credit unions, making assistance under either section illusory as a criterion of “troubled condition.”

The current rule allows NCUA to assign a FISCU's CAMEL rating "based on core workpapers received from the state supervisor in the case of a [FISCU] in a state that does not use the CAMEL system." 12 CFR 701.14(b)(3)(i)(C). Today, all states use the CAMEL system, rendering this alternative obsolete. The proposed rule therefore eliminates it.

Similarly, the current rule allows a state that does not use the CRIS system in rating its corporate FISCUs to instead use the CAMEL rating system. 12 CFR 701.14(b)(4)(i)(B). If a state uses neither the CRIS system nor the CAMEL system, the current rule allows NCUA to assign a CRIS rating "based on core workpapers received from the state supervisor." 12 CFR 701.14(b)(4)(i)(C). However, with the recapitalization and restructuring of the corporate credit union system since 2009, all of the states having jurisdiction over the ten current corporate FISCUs now use the CRIS rating system. The proposed rule therefore eliminates as moot the alternatives of using the CAMEL system to rate corporate FISCUs, and of having NCUA assign CRIS ratings to corporate FISCUs in place of a state that uses neither the CAMEL nor the CRIS rating system.

## 2. Part 700 – Definition of "Troubled Condition".

The definition of "troubled condition" in §701.14(b) is incorporated by reference in parts 711 [management official interlocks], 741 [requirements for insurance], 747 [challenge to disapproval of change in officials] and 750 [golden parachute and indemnification payments] of NCUA's regulations. 12 CFR 711.6(a), 741.205, 747.901, 750.1(e)(1) and

750.1(l). For purposes of convenience, uniformity, and ease of cross-referencing, the proposed rule adds to part 700 [general definitions] the definition of “troubled condition” for natural person and corporate credit unions exactly as revised in proposed §§701.14(b)(3) and (4).

### 3. Part 741 – Technical Correction.

In the case of a FISCO chartered less than 2 years or in “troubled condition,” current §741.205 requires NCUA, before disapproving a change in officials, to “consult with the state supervisor before making its determination pursuant to §701.14 (d)(2) and (f) of this chapter. NCUA will notify the state supervisor of its approval/disapproval no later than the time that it notifies the affected individual pursuant to §701.14(d)(1) of this chapter.” 12 CFR 741.205. The citations in both sentences are incorrect as §701.14 has no subsections (d)(1), (d)(2) or (f). The proposed rule deletes those incorrect citations without affecting the meaning of §741.205.

### **III. COMMENTS**

NCUA welcomes public comment on this proposed rule. To facilitate consideration of the public’s views, we ask commenters to organize and identify their comments by corresponding topic, part number or definition. General comments, if any, should be included in a separately identified section. Please recognize that the requirement that a troubled credit union notify NCUA of a change in officials is prescribed by statute.

Therefore, this rulemaking will not address comments suggesting that NCUA ignore or eliminate this requirement.

#### **IV. REGULATORY PROCEDURES**

##### Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (primarily those under \$10 million in assets). This proposed rule does not impose any requirements on small credit unions. NCUA has determined this proposed rule will not have a significant economic impact on a substantial number of small credit unions, so NCUA is not required to conduct a regulatory flexibility analysis.

##### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or increases an existing burden. 44 U.S.C. 3507(d); 5 CFR part 1320. For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. NCUA has determined that the proposed rule does not impose a new information collection requirement or increase an existing burden.

##### Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This proposed rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

Treasury and General Government Appropriations Act, 1999

NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

**List of Subjects**

**12 CFR Part 700**

Credit unions, Definitions.

**12 CFR Part 701**

Credit unions, Reporting and recordkeeping requirements.

**12 CFR Part 741**

Credit unions, Requirements for insurance.

## **12 CFR Part 750**

Credit unions, Golden parachute payments, Indemnity payments.

By the National Credit Union Administration Board on July 24, 2012.

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Mary Rupp

Secretary of the Board

For the reasons set forth above, NCUA proposes to amend 12 CFR parts 700, 701, 741, and 750 as follows:

### **PART 700 -- DEFINITIONS**

1. The authority citation for part 700 continues to read as follows:

**Authority:** 12 U.S.C. 1752, 1757(6), 1766.

2. Amend §700.2 by redesignating paragraph (j) as (k) and adding new paragraph (j) to read as follows:

**§700.2 Definitions.**

\* \* \* \* \*

(j) *Troubled condition* means:

(1) in the case of an insured natural person credit union:

(i) a federal credit union that has been assigned a 4 or 5 CAMEL composite rating by NCUA; or

(ii) a federally insured, state-chartered credit union that has been assigned a 4 or 5 CAMEL composite rating by either NCUA or its state supervisor; or

(iii) a federal credit union or a federally insured, state-chartered credit union that has been granted assistance under section 208 of the Federal Credit Union Act, 12 U.S.C. 1788.

(2) in the case of an insured corporate credit union:

(i) a federal credit union that has been assigned a 4 or 5 Corporate Risk Information System (CRIS) rating by NCUA in either the Financial Risk or Risk Management composites; or

(ii) a federally insured, state-chartered credit union that has been assigned a 4 or 5 CRIS rating by either NCUA or its state supervisor in either the Financial Risk or Risk Management composites; or

(iii) a federal credit union or a federally insured, state-chartered credit union that has been granted assistance under section 208 of the Federal Credit Union Act, 12 U.S.C. 1788.

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## **PART 701 – ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS**

3. The authority citation for part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761A, 1761B, 1766, 1767, 1782, 1784, 1786, 1787, 1789, section 701.6 is also authorized by 15 U.S.C. 1601, et seq.; 42 U.S.C. 1981 and 3601-3610, section 701.35 is also authorized by 42 U.S.C. 4311-4312.

4. Revise §701.14(b)(3) and §701.14(b)(4) to read as follows:

**§701.14 Change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition.**

\* \* \* \* \*

(b) \* \* \*

(3) In the case of an insured natural person credit union, *Troubled condition* means:

(i) a federal credit union that has been assigned a 4 or 5 CAMEL composite rating by NCUA; or

(ii) a federally insured, state-chartered credit union that has been assigned a 4 or 5 CAMEL composite rating by either NCUA or its state supervisor; or

(iii) a federal credit union or a federally insured, state-chartered credit union that has been granted assistance under section 208 of the Federal Credit Union Act, 12 U.S.C. 1788.

(4) In the case of an insured corporate credit union, *Troubled condition* means:

(i) a federal credit union that has been assigned a 4 or 5 Corporate Risk Information System (CRIS) rating by NCUA in either the Financial Risk or Risk Management composites; or

(ii) a federally insured, state-chartered credit union that has been assigned a 4 or 5 CRIS rating by either NCUA or its state supervisor in either the Financial Risk or Risk Management composites; or

(iii) a federal credit union or a federally insured, state-chartered credit union that has been granted assistance under section 208 of the Federal Credit Union Act, 12 U.S.C. 1788.

## **PART 741 – REQUIREMENTS FOR INSURANCE**

5. The authority citation for part 741 continues to read as follows:

**Authority:** 12 U.S.C. 1757, 1766, 1781—1790, and 1790d. Section 741.4 is also authorized by 31 U.S.C. 3717.

6. Amend §741.205 by revising the last two sentences to read as follows:

**§741.205 Reporting requirements for credit unions that are newly chartered or in troubled condition.**

\* \* \*NCUA will consult with the state supervisor before making its determination.

NCUA will notify the state supervisor of its approval/disapproval no later than the time that it notifies the affected individual.

**PART 750 – GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS**

7. The authority citation for part 750 continues to read as follows:

**Authority:** 12 U.S.C. 1786(t).

8. Amend section 750.1(e)(1)(ii) to read as follows:

**§750.1 Definitions.**

\* \* \* \* \*

(ii) \* \* \*

(C) The federally insured credit union is in troubled condition as defined in section 700.2(j) of this chapter; or

(D) In the case of a corporate credit union, the federally insured credit union is undercapitalized as defined in section 704.4 of this chapter; or

(E) The federally insured credit union is subject to a proceeding to terminate or suspend its share insurance; and

\* \* \* \* \*

9. Remove paragraph (l) of section 750.1.