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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

[NCUA-2023-0082]

RIN 3133-AF53

Simplification of Share Insurance Rules

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending its regulations governing share insurance coverage. The final rule simplifies the share insurance regulations by establishing a "trust accounts" category that will provide for coverage of funds of both revocable trusts and irrevocable trusts deposited at federally insured credit unions (FICUs), provides consistent share insurance treatment for all mortgage servicing account balances held to satisfy principal and interest obligations to a lender, and increases flexibility for the NCUA to consider various records in determining share insurance coverage in liquidations. The changes also increase consistency between the FDIC's federal deposit insurance rules and the NCUA's share insurance rules.

DATES: This rule is effective on December 1, 2026, except for the amendments to 12 CFR 745.2(c)(2) (instruction 5), 745.3 (instruction 7), and 745.14 (instruction 13), which are effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Background and Legal Authority

- A. General Background
- B. Legal Authority

II. Simplification of Share Insurance Trust Rules

- A. Notice of Proposed Rulemaking
- B. Policy Objectives
- C. Background and Need for Rulemaking
  1. Evolution of Insurance Coverage of Funds Held in Trust Accounts
  2. Current Rules for Coverage of Funds Held in Trust Accounts
  3. Need for Further Rulemaking
- D. Final Rule
- E. Examples Demonstrating Coverage Under Current and Final Rules
- F. Discussion of Comments

III. Amendments to Mortgage Servicing Account Rule

- A. Policy Objectives
- B. Background and Need for Rulemaking
- C. Final Rule
- D. Discussion of Comments

IV. Recordkeeping Requirements

- **A.** Policy Objectives

B. Background and Need for Rulemaking

C. Final Rule

D. Discussion of Comments

V. Regulatory Procedures

A. Regulatory Flexibility Act

B. Paperwork Reduction Act

C. Executive Order 13132 on Federalism

D. Assessment of Federal Regulations and Policies on Families

E. Small Business Regulatory Enforcement Fairness Act (Congressional Review Act)

I. General Background and Legal Authority

A. General Background

The NCUA is an independent federal agency that insures funds maintained in accounts of members or those otherwise eligible to maintain insured accounts (member accounts) at FICUs, protects the members who own FICUs, and charters and regulates federal credit unions (FCUs). The NCUA protects the safety and soundness of the credit union system by identifying, monitoring, and reducing risks to the National Credit Union Share Insurance Fund (Share Insurance Fund). Backed by the full faith and credit of the United States, the Share Insurance Fund provides federal share insurance to account holders in all FCUs and the majority of state-chartered credit unions.

B. Legal Authority

The Board has issued this final rule pursuant to its authority under the FCU Act. Under the Federal Credit Union Act (FCU Act), in the event of a FICU's failure the NCUA is responsible for paying share insurance to any member, or to any person with funds lawfully held

in a member account,[1] up to the standard maximum share insurance amount (SMSIA), which is currently set at $250,000.[2] The FCU Act provides that the NCUA Board must determine the amount payable consistently with actions taken by the FDIC under its deposit insurance rules.[3] The FCU Act also grants the NCUA express authority to issue regulations on the determination of the net amount of share insurance paid.[4] The FCU Act further provides that "in determining the amount payable to any member, there shall be added together all accounts in the credit union maintained by that member for that member's own benefit, either in the member's own name or in the names of others."[5] However, the FCU Act also specifically authorizes the Board to "define, with such classifications and exceptions as it may prescribe, the extent of the share insurance coverage provided for member accounts, including member accounts in the name of a minor, in trust, or in joint tenancy."[6]

The NCUA has implemented these requirements by issuing regulations recognizing particular categories of accounts, such as single ownership accounts, joint ownership accounts, revocable trust accounts, and irrevocable trust accounts.[7] If an account meets the requirements for a particular category, the account is insured, up to the $250,000 limit, separately from shares held by the member in a different account category at the same FICU. For example, provided all requirements are met, shares in the single ownership category will be separately insured from shares in the joint ownership category held by the same member at the same FICU.

The NCUA's share insurance categories have been defined through both statute and regulation. Certain categories, such as the accounts held by government depositors[8] and certain

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[1] *See* 12 U.S.C. 1752(5).
[2] 12 U.S.C. 1787(k)(1)(A), (k)(6).
[3] 12 U.S.C. 1787(k)(1)(A).
[4] 12 U.S.C. 1787(k)(1)(B). The FCU Act states that "[d]etermination of the net amount of share insurance . . . "shall be in accordance with such regulations as the Board may prescribe."
[5] 12 U.S.C. 1787(k)(1)(B).
[6] 12 U.S.C. 1787(k)(1)(C).
[7] 12 CFR part 745.
[8] *See* 12 U.S.C. 1787(k)(2).

retirement accounts, including individual retirement accounts, have been expressly defined by Congress.[9] Other categories, such as joint accounts[10] and corporate accounts,[11] have been based on statutory interpretation; these accounts have been recognized through regulations issued in 12 CFR part 745 pursuant to the NCUA's rulemaking authority. In addition to defining the insurance categories, the share insurance regulations in part 745 provide the criteria used to determine insurance coverage for shares in each category.

Notably, the FCU Act also defines the term "member account." The NCUA insures member accounts at all FICUs.[12] Importantly, this term is not limited to those persons enumerated in the credit union's field of membership who have become members. It also includes as member accounts certain nonmembers, such as other nonmember credit unions; nonmember public units and political subdivisions; and, in the case of credit unions serving predominantly low-income members, deposits of nonmembers generally. In other words, the NCUA provides share insurance coverage to members and those otherwise eligible to maintain insured accounts at FICUs.

Finally, in addition to specific authority to draft share insurance regulations under § 1787 of the FCU Act, the NCUA also has general rulemaking authority. Under the FCU Act, the NCUA is the chartering and supervisory authority for FCUs and the federal supervisory authority for FICUs.[13] The FCU Act grants the NCUA a broad mandate to issue regulations governing both FCUs and FICUs. Section 120 of the FCU Act is a general grant of regulatory authority, and it authorizes the Board to prescribe rules and regulations for the administration of the FCU Act.[14] Section 207 of the FCU Act is a specific grant of authority over share insurance coverage,

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[9] *See* 12 U.S.C. 1787(k)(3).
[10] 12 CFR 745.8.
[11] 12 CFR 745.6.
[12] 12 U.S.C. 1752(5).
[13] 12 U.S.C. 1751 *et seq*.
[14] 12 U.S.C. 1766(a).

conservatorships, and liquidations.[15] Section 209 of the FCU Act is a plenary grant of regulatory authority to the NCUA to issue rules and regulations necessary or appropriate to carry out its role as share insurer for all FICUs.[16] Accordingly, the FCU Act grants the Board broad rulemaking authority to ensure the credit union industry and the Share Insurance Fund remain safe and sound.

II. Simplification of Share Insurance Trust Rules

A. Notice of Proposed Rulemaking

At its October 19, 2023, meeting, the Board issued a proposed rule to simplify the regulations governing share insurance coverage (proposed rule).[17] The proposed rule primarily sought to simply share insurance coverage rules and increase consistency with changes adopted by the FDIC in January 2022. The Board's overall objective was to facilitate the prompt payment of share insurance in accordance with the FCU Act. As discussed in more detail later in this preamble, the Board is finalizing the proposed changes to the share insurance regulations as proposed.

B. Policy Objectives

The Board is amending its regulations governing share insurance coverage for funds held in member accounts at FICUs in connection with trusts.[18] Like the proposed rule, the amendments of the final rule are primarily intended to do the following: (1) provide a rule for trust account coverage that is easier to understand and apply; (2) provide parity with changes the FDIC adopted in January 2022;[19] and (3) facilitate the prompt payment of share insurance in

[15] 12 U.S.C. 1787.
[16] 12 U.S.C. 1789(a)(11).
[17] 88 FR 73249 (Oct. 25, 2023).
[18] Trusts include informal revocable trusts (commonly referred to as payable-on-death accounts, in-trust-for accounts, or Totten trusts), formal revocable trusts, and irrevocable trusts.
[19] 87 FR 4455 (Jan. 28, 2022).

accordance with the FCU Act. Accomplishing these objectives will further the NCUA's mission in other respects, as discussed in greater detail later in this preamble.

Clarifying Insurance Coverage for Trust Accounts

The share insurance trust rules have evolved over time, and they can be difficult to apply in some circumstances. The amendments are intended to clarify the insurance rules and trust-account limits for FICUs, their employees, their accountholders, and other interested parties. The amendments reduce the number of rules governing coverage for trust accounts, and they establish a straightforward calculation to determine coverage. The amendments are also intended to alleviate some of the confusion that FICUs, their employees, and their accountholders may experience with respect to insurance coverage and limits.

Under the regulations currently in effect (current rules), there are distinct and separate sets of rules applicable to shares of revocable trusts as opposed to irrevocable trusts. Each set of rules has its own criteria for coverage and methods by which coverage is calculated. Despite the NCUA's efforts to simplify the revocable trust rules in 2008, the consistently high volume of complex inquiries about trust accounts over an extended period suggests continued confusion about insurance limits.[20] NCUA share insurance specialists have answered over 17,000 calls with questions since the fourth quarter of 2019.[21] The NCUA estimates that over 50 percent of these inquiries, which do not include those received through email, submitted through mycreditunion.gov, or directed to NCUA staff responsible for credit union liquidations, pertain to share insurance coverage for trust accounts (revocable or irrevocable). Additionally,

[20] 73 FR 60616 (Oct. 14, 2008).

[21] The NCUA's Office of Credit Union Resources and Expansion, which fields most share insurance inquiries, only began tracking calls received on October 31, 2019. The high volume of trust-related inquires predates this tracking.

comments received in response to the proposal also support the notion that there continues to be confusion regarding share insurance coverage of trust accounts.

To better clarify insurance limits, the amendments will further simplify insurance coverage of trust accounts (revocable and irrevocable) by harmonizing the coverage criteria for revocable and irrevocable trust accounts and by establishing a simplified formula for calculating coverage that would apply to these funds deposited at FICUs. The final rule uses the calculation the NCUA first adopted in 2008 for revocable trust accounts with five or fewer beneficiaries. This formula is straightforward and familiar to FICUs and their members.[22] The amendments will also eliminate formulas in the current rules for revocable trust accounts with more than five beneficiaries and irrevocable trust accounts.

Parity

Adoption of the final rule will also align with changes the FDIC adopted in January 2022, which took effect on April 1, 2024.[23] As the Board stressed in the proposed rule, as well as in the 2021 final rule addressing the share insurance coverage of joint ownership accounts, the Board believes it is important to maintain parity, to the extent possible, between the nation's two federal deposit and share insurance programs, which are backed by the full faith and credit of the United States.[24] The Board believes it is important that members of the public who use trust accounts receive the same protection whether the accounts are maintained at FICUs or other federally insured institutions. Consistency between the FDIC's federal deposit insurance rules and the NCUA's share insurance rules promotes public confidence in the safety of funds at

[22] In 2008, the NCUA adopted an insurance calculation for revocable trusts that have five or fewer beneficiaries. Under this rule, 12 CFR 745.4(a), each trust grantor is insured up to $250,000 per beneficiary.
[23] 87 FR 4455 (Jan. 28, 2022).
[24] 86 FR 11098 (Feb. 24, 2021).

depository institutions regardless of whether the institution is an insured bank or insured credit union.

Prompt Payment of Share Insurance

The FCU Act requires the NCUA to pay accountholders "as soon as possible" after a FICU liquidation.[25] However, the insurance determination and subsequent payment for many trust accounts can be delayed when NCUA staff must review complex trust agreements and apply various rules for determining share insurance coverage. The final rule's amendments are intended to facilitate more timely share insurance determinations for trust accounts by reducing the time needed to review trust agreements and determine coverage. These amendments should promote the NCUA's ability to pay insurance proceeds to accountholders more quickly following the liquidation of a FICU, enabling accountholders to meet their financial needs and obligations.

Facilitating Liquidations

The final rule's amendments will also facilitate the liquidation of failed FICUs. The NCUA is routinely required to make share insurance determinations in connection with FICU liquidations. In many of these instances, however, share insurance coverage for certain trust accounts is based upon information that is not maintained in the FICU's account records. As a result, NCUA staff work with accountholders to obtain trust documentation following a FICU's liquidation to complete share insurance determinations. The difficulties associated with completing such a determination are exacerbated by the substantial growth in the use of formal trusts in recent decades. These amendments could reduce the time spent reviewing such

[25] 12 U.S.C. 1787(d)(1).

information, thereby reducing potential delays in the completion of share insurance determinations and payments.

C. Background and Need for Rulemaking

1. Evolution of Insurance Coverage of Funds Held in Trust Accounts

The NCUA first adopted regulations governing share insurance coverage in 1971.[26] Over the years, share insurance coverage has evolved to reflect both the NCUA's experience and changes in the credit union industry as well as statutory amendments.[27]

While the regulations addressing irrevocable trusts have undergone minimal change, the regulations addressing revocable trusts have seen numerous changes, largely aimed at providing increased flexibility and simplifying coverage. Notably, in 2004 the NCUA amended the revocable trust rules, pointing to continued confusion about the coverage for revocable trust deposits and the need for parity with then recent FDIC amendments.[28] Specifically, the NCUA eliminated the defeating contingency provisions of the rules, with the result that coverage would be based on the interests of qualifying beneficiaries, irrespective of any defeating contingencies in the trust agreement.[29] This more closely aligned coverage for formal revocable trust accounts with payable-on-death accounts. Importantly, and of relevance to this final rule, defeating contingency provisions were not eliminated for irrevocable trusts, and these provisions remain relevant for calculating share insurance coverage under the current

[26] 36 FR 2477 (Feb. 5, 1971).

[27] See, 71 FR 56001 (Sept. 26, 2006)(implementing statutory changes in the Federal Deposit Insurance Reform Act of 2005) and 80 FR 27109 (May 12, 2015)(implementing statutory changes in the Credit Union Share Insurance Fund Parity Act).

[28] 69 FR 8798 (Feb. 26, 2004).

[29] Prior to the changes adopted in 2004, if the interest of a qualifying beneficiary in an account established under the terms of a living trust agreement was contingent upon fulfillment of a specified condition, referred to as a defeating contingency, separate insurance was not available for that beneficial interest. Instead, the beneficial interest would be added to any individual account(s) of the grantor and insured up to the SMSIA, then $100,000. An example of a defeating contingency is where an account owner names his son as a beneficiary but specifies in the living trust document that his son's ability to receive any share of the trust funds is dependent upon him successfully completing college.

irrevocable trust provisions.[30] At the same time, the NCUA eliminated the requirement to name the beneficiaries of a formal revocable trust in the FICU's account records.[31] The NCUA recognized a grantor may elect to change the beneficiaries or the beneficiaries' interests at any time before the grantor's death, and requiring a FICU to maintain a current record of this information would be impractical and unnecessarily burdensome.

More recently, the NCUA's experience and adoption of similar revisions by the FDIC suggested further changes to the trust rules were necessary. In 2008, the NCUA simplified the rules in several respects.[32] First, it eliminated the kinship requirement for revocable trust beneficiaries, instead allowing any natural person, charitable organization, or nonprofit to qualify for per-beneficiary coverage. Second, a simplified calculation was established if a revocable trust named five or fewer beneficiaries; in which case, coverage would be determined without regard to the allocation of interests among the beneficiaries. This simplification eliminated the need to discern and consider beneficial interests in many cases.

A different insurance calculation applied to revocable trusts with more than five beneficiaries. At that time, the SMSIA was $100,000; thus, if more than five beneficiaries were named in a revocable trust, coverage would be the greater of: (1) $500,000; or (2) the aggregate amount of all beneficiaries' interests in the trust(s), limited to $100,000 per beneficiary. When the SMSIA was increased to $250,000, a similar adjustment was made from $100,000 to $250,000 for the calculation of per-beneficiary coverage.

2. Current Rules for Coverage of Funds Held in Trust Accounts

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[30] 12 CFR 745.2(d).
[31] 69 FR 8798, 8799 (Feb. 26, 2004).
[32] 73 FR 60616 (Oct. 14, 2008).

The NCUA's current rules recognize two different insurance categories for funds held in connection with trusts at FICUs: (1) revocable trusts and (2) irrevocable trusts. The current rules for determining insurance coverage for shares in each of these categories are described below. Additionally, share insurance coverage is always limited to FICU members and those otherwise eligible to maintain insured accounts at the FICU. The NCUA's longstanding position has been that, for revocable trust accounts, all grantors (sometimes described as settlors) of the trust must be members of the FICU or otherwise eligible to maintain an insured account.[33] For irrevocable trust accounts, the NCUA has maintained the position that either all grantors (or settlors) or all beneficiaries of the trust must be members of the FICU or otherwise eligible to maintain an insured account.[34]

As described in greater detail in section II.E., in the 2023 proposal, the NCUA requested commenters' feedback as to whether these positions should be revisited. This final rule will not alter these longstanding positions. However, the NCUA will be continuing to evaluate commenters' feedback and whether further changes are possible and necessary.

Revocable Trust Accounts

The revocable trust category applies to funds for which the member has evidenced an intention that the funds shall belong to one or more beneficiaries upon the member's death. This category includes funds held in connection with formal revocable trusts — that is, revocable trusts established through a written trust agreement. It also includes funds that are not subject to a formal trust agreement, where the FICU makes payment to the beneficiaries identified in the FICU's records upon the member's death, based on account titling and applicable state law. The

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[33] *See* 12 CFR part 701, app. A. Art. III, sec. 6 ("Shares issued in a revocable trust — the settlor must be a member of this credit union in his or her own right.").

[34] *See* 12 CFR part 701, app. A. Art. III, sec. 6 ("Shares issued in an irrevocable trust — either the settlor or the beneficiary must be a member of this credit union.").

NCUA refers to these types of accounts, including Totten trust accounts, payable-on-death accounts, and similar accounts, as "informal revocable trusts." Funds associated with formal and informal revocable trusts are aggregated for the purposes of the share insurance rules; thus, funds that will pass from the same grantor to beneficiaries are aggregated and insured up to the SMSIA, currently $250,000, per beneficiary, regardless of whether the transfer would be accomplished through a written revocable trust or an informal revocable trust.[35]

Under the current revocable trust rules, beneficiaries with insurable interests are limited to natural persons, charitable organizations, and non-profit entities recognized as such under the Internal Revenue Code of 1986.[36] If a named beneficiary does not satisfy this requirement, funds held in trust for that beneficiary are treated as single ownership funds of the grantor and aggregated with any other single ownership accounts the grantor maintains at the same FICU.[37]

Certain requirements also must be satisfied for an account to be insured in the revocable trust category. The required intention that the funds shall belong to the beneficiaries upon the grantor's death must either be manifested in the "title" of the account or elsewhere in the account records of the credit union (using commonly accepted terms such as "in trust for," "as trustee for," "payable-on-death to," or any acronym for these terms).[38] For the purposes of this requirement, a FICU's electronic account records are included. For example, a FICU's electronic account records could identify the account as a revocable trust account through coding or a similar mechanism. In addition, the beneficiaries of informal trusts (that is, payable-on-death accounts) must be named in the FICU's account records.[39] The requirement to name beneficiaries in the FICU's account records does not apply to formal revocable trusts; the NCUA generally obtains information on beneficiaries of such trusts from accountholders following a

[35] 12 CFR 745.4(a).
[36] 12 CFR 745.4(c).
[37] 12 CFR 745.4(d).
[38] 12 CFR 745.4(b).
[39] *Id.*

FICU's liquidation. If a member's funds at a liquidated FICU held in trust accounts exceed the SMSIA, a hold will be placed on the portion of such funds in excess of the SMSIA until the NCUA can fully review the member's trust agreement and related documents to verify the beneficiary rules are satisfied. Therefore, this process can result in delays to some insured accountholders' insurance determinations and full insurance payments.

The calculation of share insurance coverage for revocable trust accounts depends upon the number of unique beneficiaries named by a member accountholder. If five or fewer beneficiaries have been named, the member accountholder is insured in an amount up to the total number of named beneficiaries multiplied by the SMSIA, and the specific allocation of interests among the beneficiaries is not considered.[40] If more than five beneficiaries have been named, the member accountholder is insured up to the greater of: (1) five times the SMSIA; or (2) the total of the interests of each beneficiary, with each such interest limited to the SMSIA.[41] For the purposes of this calculation, a life estate interest is valued at the SMSIA.[42]

Where a revocable trust account is jointly owned, the interests of each account owner are separately insured up to the SMSIA per beneficiary.[43] However, if the co-owners are the only beneficiaries of the trust, the account is instead insured under the NCUA's joint account rule.[44]

The current revocable trust rule also contains a provision that was intended to reduce confusion and the potential for a decrease in share insurance coverage in the case of the death of a grantor. Specifically, if a revocable trust becomes irrevocable due to the death of the grantor, the trust account may continue to be insured under the revocable trust rules.[45] Absent this

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[40] 12 CFR 745.4(a).
[41] 12 CFR 745.4(e).
[42] 12 CFR 745.4(g). For example, if a revocable trust provides a life estate for the member accountholder's spouse and remainder interests for six other beneficiaries, the spouse's life estate interest would be valued at the lesser of $250,000 or the amount held in the trust for the purposes of the share insurance calculation.
[43] 12 CFR 745.4(f)(1).
[44] 12 CFR 745.4(f)(2).
[45] 12 CFR 745.4(h).

provision, the irrevocable trust rules would apply following the grantor's death, as the revocable trust becomes irrevocable at that time, which could result in a reduction in coverage.[46]

Irrevocable Trust Accounts

Accounts maintaining funds held by an irrevocable trust that has been established either by written agreement or by statute are insured in the irrevocable trust share insurance category. Calculating coverage in this category requires a determination of whether beneficiaries' interests in the trust are contingent or non-contingent.[47] Non-contingent interests are interests that may be determined without evaluation of any contingencies, except for those covered by the present worth and life expectancy tables and the rules for their use set forth in the Internal Revenue Service (IRS) Federal Estate Tax Regulations.[48] Funds held for non-contingent trust interests are insured up to the SMSIA for each such beneficiary.[49] Funds held for contingent trust interests are aggregated and insured up to the SMSIA in total.[50]

The irrevocable trust rules do not apply to funds held for a grantor's retained interest in an irrevocable trust.[51] Such funds are aggregated with the grantor's other single ownership funds for the purposes of applying the share insurance limit.

3. Need for Further Rulemaking

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[46] The revocable trust rules tend to provide greater coverage than the irrevocable trust rules because contingencies are not considered for revocable trusts. In addition, where five or fewer beneficiaries are named by a revocable trust, specific allocations to beneficiaries also are not considered.
[47] 12 CFR 745.2(d) and 745.9-1.
[48] 12 CFR 745.2(d)(1). For example, a life estate interest is generally non-contingent, as it may be valued using the life expectancy tables. However, where a trustee has discretion to divert funds from one beneficiary to another to provide for the second beneficiary's medical needs, the first beneficiary's interest is contingent upon the trustee's discretion.
[49] 12 CFR 745.9-1(b).
[50] 12 CFR 745.2(d)(2).
[51] *See* 12 CFR 745.2(d)(4) (The term "trust interest" does not include any interest retained by the settlor.).

As noted, the rules governing share insurance coverage for trust accounts have been simplified and modified on several occasions. However, these rules are still frequently misunderstood and can present some implementation challenges. The trust rules can require overly detailed, time-consuming, and resource-intensive reviews of trust documentation to obtain the information necessary to calculate share insurance coverage. This information is often not found in a FICU's records and must be obtained from members after a FICU's liquidation.

Revision of the share insurance coverage rules for trust accounts will reduce the amount of information that must be provided for trust accounts, as well as the complexity of the NCUA's review. This revision should enable the NCUA to complete share insurance determinations more rapidly if a FICU with a large number of trust accounts is liquidated. Delays in the payment of share insurance can be consequential for accountholders, and the final rule will help to mitigate those delays.

Several factors contribute to the challenges of making insurance determinations for trust accounts under the current rules. First, there are two different sets of rules governing share insurance coverage for trust accounts. Understanding the coverage for a particular account requires a threshold inquiry to determine which set of rules to apply — the revocable trust rules or the irrevocable trust rules. This requires review of the trust agreement to determine the type of trust (revocable or irrevocable), and the inquiry may be complicated by innovations in state trust law that are intended to increase the flexibility and utility of trusts. In some cases, this threshold inquiry is also complicated by the provision of the revocable trust rules that allows for continued coverage under the revocable trust rules where a trust becomes irrevocable upon the grantor's death. The result of an irrevocable trust deposit being insured under the revocable trust rules has proven confusing for both accountholders and FICUs.

Second, even after determining which set of rules applies to a particular account, it may be challenging to apply the current rules. For example, the revocable trust rules include unique

titling requirements and beneficiary requirements. These rules also provide for two separate calculations to determine insurance coverage, depending in part upon whether there are five or fewer trust beneficiaries or at least six beneficiaries. In addition, for revocable trusts that provide benefits to multiple generations of potential beneficiaries, the NCUA needs to evaluate the trust agreement to determine whether a beneficiary is a primary beneficiary (immediately entitled to funds when a grantor dies), contingent beneficiary, or remainder beneficiary. Only eligible primary beneficiaries and remainder beneficiaries are considered when calculating NCUA share insurance coverage. The irrevocable trust rules may require detailed review of trust agreements to determine whether beneficiaries' interests are contingent and may also require actuarial or present value calculations. These types of requirements complicate the determination of insurance coverage for trust deposits, have proven confusing for accountholders, and extend the time needed to complete a share insurance determination and insurance payment.

Third, the complexity and variety of account holders' trust arrangements adds to the difficulty of determining share insurance coverage under the current rules. For example, trust interests are sometimes defined through numerous conditions and formulas, and a careful analysis of these provisions may be necessary to calculate share insurance coverage under the current rules. Arrangements involving multiple trusts where the same beneficiaries are named by the same grantor(s) in different trusts add to the difficulty of applying the trust rules. The NCUA believes simplification of the share insurance rules presents an opportunity to more closely align the coverage provided for different types of trust funds. For example, the current revocable trust rules generally provide for a greater amount of coverage than the irrevocable trust rules. This outcome occurs because contingent interests for irrevocable trusts are aggregated and insured up to the SMSIA rather than up to the SMSIA per beneficiary, while contingencies are not considered and therefore do not limit coverage in the same manner for revocable trusts.

Finally, as previously noted, adoption of this final rule will align with changes the FDIC adopted in January 2022, which took effect on April 1, 2024. The Board believes it is important to maintain parity between the nation's two federal deposit and share insurance programs.[52] It is imperative that members of the public who use trust accounts for the transfer of ownership of assets better understand the rules governing such accounts and receive the same protection, whether the accounts are maintained at FICUs or other federally insured institutions.

D. Final Rule

The final rule adopts the proposed changes to the trust account rules as proposed. Specifically, the NCUA is amending the rules governing share insurance coverage for funds held in trust accounts at FICUs. Generally, the amendments will do the following: (1) merge the revocable and irrevocable trust categories into one category; (2) apply a simpler, common calculation method to determine insurance coverage for funds held by revocable and irrevocable trusts; and (3) eliminate certain requirements found in the current rules for revocable and irrevocable trusts.

Merger of Revocable and Irrevocable Trust Categories

As discussed above, the NCUA historically has insured revocable trust funds and irrevocable trust funds held at FICUs under two separate insurance categories. The NCUA's experience has been this bifurcation often confuses FICUs' staff and their members, as it requires a threshold inquiry to determine which set of rules to apply to a trust account. Moreover, all trust funds deposited at a FICU must be categorized before the aggregation of trust funds deposited within each category can be completed. The NCUA believes funds held in

[52] 12 U.S.C. 1787(k)(1)(A).

connection with revocable and irrevocable trusts are sufficiently similar, for the purposes of share insurance coverage, to warrant the merger of these two categories into one category. Under the NCUA's current rules, share insurance coverage is provided because the trustee maintains the funds for the benefit of the beneficiaries. This fact is true regardless of whether the trust is revocable or irrevocable. Merging the revocable and irrevocable trust categories will better conform share insurance coverage to the substance — rather than the legal form — of the trust arrangement. This underlying principle of the share insurance rules is particularly important in the context of trusts, as state law often provides flexibility to structure arrangements in different ways to accomplish a given purpose.[53]

FICU members may have various reasons for selecting a particular legal arrangement, but that decision should not significantly affect share insurance coverage. Importantly, the merger of the revocable trust and irrevocable trust categories into one category for share insurance purposes will not affect the application or operation of state trust law; it will only affect the determination of share insurance coverage for these types of trust funds in the event of a FICU's liquidation.

Accordingly, the NCUA is amending § 745.4 of its regulations, which currently applies only to revocable trust accounts, to establish a new "trust accounts" category that includes both revocable and irrevocable trust funds deposited at a FICU. The final rule defines the funds that will be included in this category as follows: (1) informal revocable trust funds, such as payable-on-death accounts, in-trust-for accounts, and Totten trust accounts; (2) formal revocable trust funds, defined to mean funds held pursuant to a written revocable trust agreement under which funds pass to one or more beneficiaries upon the grantor's death; and (3) irrevocable trust funds,

[53] For example, the NCUA currently aggregates funds in payable-on-death accounts and funds of written revocable trusts for the purposes of share insurance coverage, despite their separate and distinct legal mechanisms. Also, where the co-owners of a revocable trust are also that trust's sole beneficiaries, the NCUA instead insures the trust's funds as joint funds, reflecting the arrangement's substance rather than its legal form.

meaning funds held pursuant to an irrevocable trust established by written agreement or by statute.

In addition, the merger of the revocable trust and irrevocable trust categories eliminates the need for § 745.4(h) through (i) of the current revocable trust rules, which provide that the revocable trust rules may continue to apply to an account where a formal revocable trust becomes irrevocable due to the death of one or more of the trust's grantors. These provisions were intended to benefit accountholders, who sometimes were unaware that a trust owner's death could trigger a significant decrease in insurance coverage as a revocable trust becomes irrevocable.

However, in the NCUA's experience, this rule has proven complex in part because it results in some irrevocable trusts being insured per the revocable trust rules, while other irrevocable trusts are insured under the irrevocable trust rules.[54] As a result, an accountholder could know a trust was irrevocable but not know which share insurance rules to apply. The final rule will insure funds of formal and informal revocable trusts and irrevocable trusts according to a common set of rules, eliminating the need for these provisions (§ 745.4(h) through (i)) and simplifying coverage for accountholders. Accordingly, the death of a formal revocable trust owner will not result in a decrease in share insurance coverage for the trust. Coverage for irrevocable and formal revocable trusts will fall under the same category and share insurance coverage will remain the same, even after the expiration of the six-month grace period following the death of an account owner.[55]

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[54] As noted above, if a revocable trust becomes irrevocable due to the death of the grantor, the account continues to be insured under the revocable trust rules. 12 CFR 745.4(h).

[55] The death of an account owner can affect share insurance coverage, often reducing the amount of coverage that applies to a family's accounts. To ensure that families dealing with the death of a family member have adequate time to review and restructure accounts if necessary, the NCUA insures a deceased owner's accounts as if he/she/they were still alive for a period of 6 months after his/her/their death. 12 CFR 745.2(e).

Informal revocable trust accounts will also be insured under this same trust account category but are unlikely to result in the creation of an irrevocable trust account upon an owner or co-owner's death. As is the case under the existing share insurance regulations, when a co-owner of an informal revocable trust account dies, share insurance coverage for the deceased owner's interest in the account will cease after the expiration of the six-month grace period allowed for the death of share account owners. After the expiration of the six-month grace period, share insurance coverage will be calculated as if the deceased co-owner did not exist and the deceased co-owner's name did not remain on the account. This treatment of the account will be based on the fact that all funds in the account will be owned by one person (that is, the surviving co-owner).

Calculation of Coverage

As was proposed, the final rule uses one streamlined calculation to determine the amount of share insurance coverage for funds of both revocable and irrevocable trusts. This method is already used by the NCUA to calculate coverage for revocable trusts that have five or fewer beneficiaries, and it is an aspect of the rules that is generally well understood by FICUs and their members. The final rule will provide that a grantor's trust funds are insured in an amount up to the SMSIA (currently $250,000) multiplied by the number of trust beneficiaries, not to exceed five beneficiaries. The NCUA will presume that, for share insurance purposes, the trust provides for equal treatment of beneficiaries such that specific allocation of the funds to the respective beneficiaries will not be relevant, consistent with the NCUA's current treatment of revocable trusts with five or fewer beneficiaries. This will, in effect, limit coverage for a grantor's trust funds at each FICU to a total of $1,250,000; in other words, maximum coverage will be equivalent to $250,000 per beneficiary for up to five beneficiaries. In determining share insurance coverage, the NCUA will continue to consider only beneficiaries who are expected to

receive the funds held by the trust in a member account at the FICU; the NCUA will not consider beneficiaries who are expected to receive only non-deposit assets of the trust.

The NCUA is deciding to calculate coverage in this manner, in part, based on its experience with the revocable trust rules after the modifications to these rules in 2008.[56] The NCUA has found the share insurance calculation method for revocable trusts with five or fewer beneficiaries has been the most straightforward and is easier for FICUs' staff and the public to understand. This calculation provides for insurance in an amount up to the total number of unique grantor-beneficiary trust relationships (that is, the number of grantors, multiplied by the total number of beneficiaries, multiplied by the SMSIA).[57] In addition to being simpler, this calculation has proven beneficial in liquidations, as it leads to more prompt share insurance determinations and quicker access to insured funds for accountholders. As discussed in section II.E., commenters also supported using this calculation. Accordingly, the NCUA will calculate share insurance coverage for trust accounts based on the simpler calculation currently used for revocable trusts with five or fewer beneficiaries.

The streamlined calculation that will be used to determine coverage for revocable trust funds and irrevocable trust funds includes a limit on the total amount of share insurance coverage for all of an accountholder's funds in the trust category at the same FICU. As was proposed, the final rule will provide coverage for trust funds at each FICU up to a total of $1,250,000 per grantor; in other words, each grantor's insurance limit will be $250,000 per beneficiary up to a maximum of five beneficiaries. The level of five beneficiaries is an important threshold in the current revocable trust rules, as it defines whether a grantor's coverage is determined using the simpler calculation of the number of beneficiaries multiplied by the SMSIA or the more complex calculation involving the consideration of the amount of each beneficiary's specific interest

[56] 73 FR 60616 (Oct. 14, 2008).
[57] For example, two co-grantors that designate five beneficiaries are insured for up to $2,500,000 (2 x 5 x $250,000).

(which applies when there are six or more beneficiaries). The current trust rules limit coverage by tying coverage to the specific interests of each beneficiary of an irrevocable trust or of each beneficiary of a revocable trust with more than five beneficiaries. The final rule's $1,250,000 per-grantor, per-FICU limit is more straightforward and balances the objectives of simplifying the trust rules, promoting timely payment of share insurance, facilitating liquidations, ensuring consistency with the FCU Act, and limiting risk to the Share Insurance Fund. The final rule will also provide parity between the NCUA's regulations and those adopted by the FDIC in early 2022.[58]

The NCUA anticipates that limiting coverage to $1,250,000 per grantor, per FICU, for trust funds will not have a substantial effect on accountholders, as most trust accounts in past FICU liquidations have had balances well below this level. However, because the NCUA lacks sufficient information to project the exact effects of the new limit on current accountholders, the agency requested in the proposed rule that commenters provide information that might be helpful in this regard. As discussed in greater detail in section II.E., the comments received did not indicate that the limit will have a substantial effect on accountholders.

Under the final rule, to determine the level of insurance coverage that will apply to funds held in trust accounts, accountholders will still need to identify the grantors and the eligible beneficiaries of the trust. The level of coverage that applies to trust accounts will no longer be affected by the specific allocation of trust funds to each of the beneficiaries of the trust or by contingencies outlined in the trust agreement. Instead, the final rule will provide that a grantor's trust funds are insured up to a total of $1,250,000 per grantor, or an amount up to the SMSIA multiplied by the number of eligible beneficiaries, with a limit of no more than five beneficiaries.

[58] 87 FR 4455 (Jan. 28, 2022).

Aggregation

As was proposed, the final rule also provides for the aggregation of funds held in revocable and irrevocable trust accounts for the purposes of applying the share insurance limit. Under the current rules, funds held in informal revocable trust accounts and formal revocable trust accounts are aggregated for this purpose.[59] The final rule will aggregate a grantor's informal and formal revocable trust accounts, as well as irrevocable trust accounts. For example, all informal revocable trusts, formal revocable trusts, and irrevocable trusts held for the same grantor at the same FICU will be aggregated, and the grantor's insurance limit will be determined by how many eligible and unique beneficiaries are identified among all of their trust accounts.[60] The share insurance coverage provided in the "trust accounts" category will remain separate from the coverage provided for other funds held in a different right and capacity at the same FICU.

However, some accountholders who currently maintain both revocable trust and irrevocable trust deposits at the same FICU may have funds in excess of the insurance limit when these separate categories are combined. As noted in the proposed rule, the NCUA lacks data on accountholders' trust arrangements that allow it to estimate the number of accountholders who might be affected in this manner. As such, the NCUA requested that commenters provide information that might be helpful in this regard. As discussed in greater detail in section II.E., the comments received did not indicate that the aggregate limit will have a substantial effect on

[59] *See* 12 CFR 745.4(a) ("All funds that an owner holds in both living trust accounts and payable-on-death accounts, at the same NCUA-insured credit union and naming the same beneficiaries, are aggregated for insurance purposes and insured to the applicable coverage limits….").
[60] For example, if a grantor maintained both an informal revocable trust account with three beneficiaries and a formal revocable trust account with three separate and unique beneficiaries, the two accounts would be aggregated and the maximum share insurance available would be $1.25 million (one grantor times the SMSIA times the number of unique beneficiaries, limited to five). However, if the same three people were the beneficiaries of both accounts, the maximum share insurance available would be $750,000 (one grantor times the SMSIA times the three unique beneficiaries).

accountholders. The agency does not believe this change will impact a substantial number of accountholders and is finalizing it as proposed.

Eligible Beneficiaries

Currently, the revocable trust rules provide that eligible beneficiaries include natural persons, charitable organizations, and non-profit entities recognized as such under the Internal Revenue Code of 1986,[61] while the irrevocable trust rules do not establish criteria for beneficiaries. As stated in the proposed rule, the NCUA believes a single definition should be used to determine whether an entity is an eligible beneficiary for all trust funds and proposes to use the current revocable trust rule's definition. The NCUA believes this single definition will result in a change in share insurance coverage only in very rare cases.

As was proposed, the final rule will exclude from the calculation of share insurance coverage beneficiaries who would obtain an interest in a trust only if one or more named beneficiaries are deceased (often referred to as contingent beneficiaries). This exclusion codifies existing practice to include only primary, unique beneficiaries in the share insurance calculation.[62] This codification does not represent a substantive change in coverage. Consistent with treatment under the current trust rules, naming a chain of contingent beneficiaries that would obtain trust interests only in the event of a beneficiary's death will not increase share insurance coverage.

Finally, as in the proposed rule, the final rule will codify an interpretation of the trust rules where an informal revocable trust designates the depositor's formal trust as its beneficiary. A formal trust generally does not meet the definition of an eligible beneficiary for share

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[61] 12 CFR 754.4(c).

[62] *See NCUA Your Insured Funds* at page 42 ("The beneficiaries are the people or entities entitled to an interest in the trust. Contingent or alternative trust beneficiaries are not considered to have an interest in the trust funds and other assets as long as the primary or initial beneficiaries are still living, with the exception of revocable living trusts with a life estate interest.").

insurance purposes, but the NCUA has treated such accounts as revocable trust accounts under the trust rules, insuring the account as if it were titled in the name of the formal trust.[63] Additionally, the Board wishes to clarify that if an irrevocable trust is named as beneficiary of an informal revocable trust account, the informal revocable trust account will also be treated as if titled in the name of that formal trust.

Retained Interests and Ineligible Beneficiaries' Interests

The current trust rules provide that, in some instances, funds corresponding to specific beneficiaries are aggregated with a grantor's single ownership deposits at the same FICU for the purposes of the share insurance calculation. These instances include a grantor's retained interest in an irrevocable trust[64] and interests of beneficiaries who do not satisfy the definition of "beneficiary."[65] This adds complexity to the share insurance calculation, as a detailed review of a trust agreement may be required to value such interests so they may be aggregated with a grantor's other funds. To implement the streamlined calculation for funds held in trust accounts, the NCUA proposed to eliminate these provisions. Under the proposed rule, the grantor and other beneficiaries who do not satisfy the definition of "eligible beneficiary" would not be included for the purposes of the share insurance calculation.[66] Importantly, this exclusion would not in any way limit a grantor's ability to establish such trust interests under state law. These interests simply would not factor into the calculation of share insurance coverage. The Board has decided to adopt these changes as proposed.

[63] *See* 74 FR 55747, 55748 (Oct. 29, 2009).
[64] *See* 12 CFR 745.2(d)(4).
[65] 12 CFR 745.4(d).
[66] In the unlikely event a trust does not name any eligible beneficiaries, the NCUA would treat the funds in the trust account as funds held in a single ownership account. Such funds would be aggregated with any other single ownership funds that the grantor maintains at the same FICU and insured up to the SMSIA of $250,000.

Future Trusts Named as Beneficiaries

Trusts often contain provisions for the establishment of one or more new trusts upon the grantor's death. The proposed rule sought to clarify share insurance coverage in these situations. Under the proposed rule, if a trust agreement provides that trust funds will pass into one or more new trusts upon the death of the grantor (or grantors), the future trust (or trusts) would not be treated as beneficiaries for the purposes of the calculation. The future trust(s) instead would be considered mechanisms for distributing trust funds, and the natural persons or organizations that receive the trust funds through the future trusts would be considered the beneficiaries for the purposes of the share insurance calculation. The Board has decided to adopt this position as proposed. This clarification is consistent with the NCUA's current interpretations and would not represent a substantive change in share insurance coverage.

Naming of Beneficiaries in Share Account Records

Consistent with the current revocable trust rules and the proposed rule, the final rule will continue to require the beneficiaries of an informal revocable trust to be expressly named in the account records of the FICU.[67] The NCUA does not believe this requirement imposes a burden on FICUs, as informal revocable trusts by their nature require the FICU to be able to identify the individuals or entities to which funds would be paid upon the accountholder's death.

Presumption of Ownership

As in the proposed rule, the final rule also states that, unless otherwise specified in a FICU's account records, funds held in an account for a trust established by multiple grantors are

[67] *See* 12 CFR 745.4(b).

presumed to be owned in equal shares. This presumption is consistent with the current revocable trust rules.[68]

Funds Covered Under Other Rules

Under the proposed rule, certain trust funds that are covered by other sections of the share insurance regulations would be excluded from coverage under § 745.4. For example, employee benefit plan accounts are insured pursuant to current § 745.9-2. In addition, if the co-owners of an informal or formal revocable trust are the trust's sole beneficiaries, funds held in connection with the trust would be treated as a joint ownership account under § 745.8. The Board has decided to adopt this as proposed. In each of the provided cases, the NCUA is not changing the current rule.

Removal of the Appendix to Part 745

As was proposed, the final rule will remove the appendix to part 745, which provides examples of share insurance coverage. As noted in the proposed rule, the NCUA plans to update its *Your Insured Funds* brochure to reflect the amendments made to part 745.[69] The Board believes the updated brochure and other updated resources available on mycreditunion.gov will provide a more consumer friendly and easier-to-update avenue for providing examples of share insurance coverage.

The final rule also removes references to the appendix in the heading of part 745 and in § 745.0, § 745.2, and § 745.13. As such, once this portion of the final rule has gone into effect, providing the appendix will no longer satisfy the notification to members/shareholders

[68] *See* 12 CFR 745.4(f).

[69] https://mycreditunion.gov/sites/default/static-files/insured-funds-brochure.pdf.

requirement in § 745.13. Instead, FICUs will have to make available either the rules in part 745 of the NCUA's regulations or the updated *Your Insured Funds* brochure.

Conforming Changes

As discussed in the proposal, the final rule's simplification of the calculation for insurance coverage for funds held in trust accounts permits the elimination of current § 745.2(d) of the regulations addressing the valuation of trust interests. As discussed further below, the description of non-contingent interests in § 745.2(d)(1) and (2) is no longer relevant to trust accounts under the final rule. Additionally, § 745.2(d)(3) regarding the deemed *pro rata* contribution of settlors to a trust is replaced by new § 745.4(b)(4), which presumes equal allocation. Current § 745.2(d)(4) defining a "trust interest" is replaced by the definition of "irrevocable trust" in new § 745.4(a)(3).

Regarding non-contingent interests, as was proposed, the final rule moves the current description of a non-contingent interest in § 745.2(d)(1) to the definitions section of part 745. The new definition of "non-contingent interest" in § 745.1 remains substantively the same but will now only be relevant to evaluating participants' non-contingent interests in shares of an employee benefit plan under § 745.9-2(a). As was proposed, the new definition of "non-contingent interest" adds language to include any present worth or life expectancy tables that the IRS may adopt that are similar to those set forth in § 20.2031-7 of the Federal Estate Tax Regulations (26 CFR 20.2031-7). This change is not substantive but is instead intended to provide flexibility if the IRS makes any changes. As part of this change, the final rule also makes non-substantive changes to § 745.1 to improve readability. The final rule also removes the reference to § 745.2 in current § 745.9-2.

Finally, the final rule redesignates current § 745.9-2 as § 745.9 to reflect the elimination of current § 745.9-1 governing irrevocable trust accounts. The reference in § 745.9-2(a) to §

745.2 is also removed to reflect the elimination of the description of a non-contingent interest in current § 745.2(d) and adoption of a definition of "non-contingent interest" in new § 745.1.

Effective Date

The effective date of the trust account changes will be delayed until December 1, 2026. This delayed effective date mirrors the timeline the FDIC used in adopting its trust account changes. It is intended to provide FICUs, accountholders, and the NCUA time to prepare for the changes in trust account share insurance coverage. FICUs will have an opportunity to review the changes in coverage, train employees, and update publications if necessary. Accountholders may review insurance coverage for their funds and adjust their share account arrangements if desired. In addition, the NCUA must update its share insurance estimator and share insurance coverage publications, including publications that provide guidance to FICUs and accountholders. The Board's rationale for adopting a delayed effective date as was suggested in the proposal and not providing for any continued application of the current rules to existing accounts is discussed further in section II.E.

E. Examples Demonstrating Coverage Under Current and Final Rules

To assist commenters, the NCUA is providing examples demonstrating how the final rule will apply to determine share insurance coverage for funds held in trust accounts. These examples are not intended to be all-inclusive; they merely address a few possible scenarios involving funds held in trust accounts. The NCUA expects that, for most accountholders, insurance coverage will not change under the final rule. The examples here highlight a few instances where coverage could be reduced to ensure the public is aware of them. The examples mirror those provided in the proposed rule.

In addition, all examples involve members or those otherwise entitled to maintain insured accounts at the FICU. Again, share insurance coverage is only available to FICU members and those otherwise entitled to maintain insured accounts. For revocable trust accounts, all grantors must be members of the FICU or otherwise eligible to maintain an insured account to receive share insurance coverage. In the case of an irrevocable trust account, all grantors or all beneficiaries must be members of the FICU or otherwise eligible to maintain an insured account to receive share insurance coverage. Where a revocable trust account has become irrevocable because of the death of a grantor, the deceased grantor's membership will continue to satisfy their membership requirement as long as the trust account continues to be maintained at the FICU.

Example 1: Payable-on-Death Account

Member A establishes a payable-on-death account at a FICU. Member A has designated three beneficiaries for this account — B, C, and D — who will receive the funds upon member A's death and listed all three on a form provided to the FICU. The only other share account that member A maintains at the same FICU is a share draft account with no designated beneficiaries. What is the maximum amount of share insurance coverage for member A's shares at the FICU?

Under the final rule, member A's payable-on-death account represents an informal revocable trust and would be insured in the trust accounts category. The maximum coverage for this account would be equal to the SMSIA (currently $250,000) multiplied by the number of grantors (in this case one because member A established the account) multiplied by the number of beneficiaries, up to a maximum of five (here three, the number of beneficiaries is less than five). Member A's payable-on-death account would be insured for up to ($250,000) x (1) x (3) = $750,000.

The coverage for member A's payable-on-death account is separate from the coverage provided for member A's share draft account, which would be insured in the single ownership category because she has not named any beneficiaries for that account. The single ownership share draft account would be insured up to the SMSIA, $250,000. Member A's total insurance coverage for shares at the FICU would be $750,000 + $250,000 = $1,000,000. Notably, this level of coverage is the same as that provided by the current share insurance rules.

Example 2: Formal Revocable Trust and Informal Revocable Trust

Members E and F jointly establish a payable-on-death account at a FICU. Members E and F have designated three beneficiaries for this account — G, H, and I — who will receive the funds after both members E and F are deceased. They list these beneficiaries on a form provided to the FICU. Members E and F also jointly establish an account titled in the name of the "E and F Living Trust" at the same FICU. Members E and F are the grantors of the living trust, a formal revocable trust that includes the same three beneficiaries, G, H, and I. The grantors, members E and F, do not maintain any other share accounts at this same FICU. What is the maximum amount of share insurance coverage for members E and F's shares?

Under the final rule, members E and F's payable-on-death account represents an informal revocable trust and would be insured in the trust accounts category. Members E and F's living trust account constitutes a formal revocable trust and would also be insured in the trust accounts category. To the extent the funds in these accounts would pass from the same grantor (E or F) to beneficiaries (G, H, and I), the funds would be aggregated for the purpose of applying the share insurance limit. As under the current rules, it would be irrelevant that the grantors' shares are divided between the payable-on-death account and the living trust account.

The maximum coverage for members E and F's shares would be equal to the SMSIA ($250,000) multiplied by the number of grantors (two, because members E and F are the grantors

with respect to both accounts) multiplied by the number of unique beneficiaries, up to a maximum of five (here three, the number of beneficiaries, is less than five). Therefore, the coverage for E and F's trust accounts would be ($250,000) x (2) x (3) = $1,500,000. This level of coverage is the same as that provided by the current share insurance rules.

Example 3: Two-Owner Trust and a One-Owner Trust

Members J and K jointly establish a payable-on-death account at a FICU. Members J and K have designated three beneficiaries for this account — L, M, and N — who will receive the funds after both J and K are deceased. They list these beneficiaries on a form provided to the FICU. At the same FICU, Member J establishes a payable-on-death account and designates Member K as the beneficiary upon J's death. What is the maximum amount of coverage for members J and K's shares?

Under the final rule, both accounts would be insured under the trust account category. To the extent these shares would pass from the same grantor (J or K) to beneficiaries (such as L, M, and N), they would be aggregated for the purpose of applying the share insurance limit. For example, member K identified three beneficiaries (L, M, and N), and therefore, member K's insurance limit is $750,000 (or (1) x (3) x ($250,000)). Member K would be fully insured as long as one-half interest of the co-owned trust account was $750,000 or less, which is the same level of coverage provided under current rules. In this example, member J's situation differs from member K's because J has a second trust account, but the insurance calculation remains the same. Specifically, member J has two trust accounts and identified four unique beneficiaries (L, M, N, and K); therefore, member J's insurance limit is $1,000,000 (or (1) x (4) x ($250,000)). Member J would remain fully insured as long as J's trust shares — equal to one-half of the co-owned trust account plus J's personal trust account — total no more than $1,000,000. This

methodology and level of coverage is the same as that provided by the current share insurance rules.

Example 4: Revocable and Irrevocable Trusts

Member O establishes a share account at a FICU titled the “O Living Trust.” Member O is the grantor of this living trust, a formal revocable trust that includes three beneficiaries — P, Q, and R. The grantor, member O, also establishes an irrevocable trust for the benefit of the same three beneficiaries. The trustee of the irrevocable trust maintains a share account at the same FICU as the living trust account, titled in the name of the irrevocable trust. Neither member O nor the trustee maintains other share accounts at the same FICU. What is the insurance coverage for these accounts?

Under the final rule, the living trust account is a formal revocable trust and would be insured in the trust accounts category. The account containing the funds from the irrevocable trust account would also be insured in the trust accounts category. To the extent these shares would pass from the same grantor (member O) to beneficiaries (P, Q, or R), they would be aggregated for the purposes of applying the share insurance limit. It would be irrelevant that the shares are divided between the living trust account and the irrevocable trust account. The maximum coverage for these shares would be equal to the SMSIA ($250,000) multiplied by the number of grantors (one, because member O is the grantor with respect to both accounts) multiplied by the number of beneficiaries, up to a maximum of five (here three, the number of beneficiaries, is less than five). Therefore, the maximum coverage for the shares in the trust accounts would be ($250,000) x (1) x (3) = $750,000.

This example is one of the few instances where the final rule may provide a reduced amount of coverage as a result of the aggregation of revocable and irrevocable trust accounts, depending on the structure of the trust agreement. Under the current rules, member O would be

insured for up to $750,000 for revocable trust shares and separately insured for up to $750,000 for irrevocable trust shares (assuming non-contingent beneficial interests), resulting in $1,500,000 in total coverage. If that were the case, current coverage would exceed that provided by the final rule. However, the terms of irrevocable trusts sometimes lead to less coverage than expected. It is often the case that irrevocable trust accounts are only insured up to $250,000 under the current rules due to contingencies in the trust agreement, but determining this with certainty often requires careful consideration of the trust agreement's contingency provisions. Under the current rule, if contingencies existed, current coverage would exceed that provided by the final rule, as member O would be insured up to $1,000,000; $750,000 for the revocable trust and $250,000 for the irrevocable trust. In the NCUA's view, one of the key benefits of the final rule versus the current rule will be greater clarity and predictability in share insurance coverage because whether contingencies exist will no longer be a factor that could affect share insurance.

Example 5: Many Beneficiaries Named

Member S establishes a share account at a FICU titled in the name of the "S Living Trust." This trust is a revocable trust naming seven beneficiaries — T, U, V, W, X, Y, and Z. The grantor, member S, does not maintain any other shares at the same FICU. What is the coverage for this account?

Under the final rule, the living trust is a formal revocable trust and would be insured in the trust accounts category. The maximum coverage for this account would be equal to the SMSIA ($250,000) multiplied by the number of grantors (one, because member S is the sole grantor) multiplied by the number of beneficiaries, up to a maximum of five. Here the number of named beneficiaries (seven) exceeds the maximum (five), so insurance is calculated using the maximum (five). Coverage for the account would be ($250,000) x (1) x (5) = $1,250,000.

This example is another instance where the final rule may provide for less coverage than the current rule. Under the current rule, because more than five beneficiaries are named, the account is insured up to the greater of the following: (1) five times the SMSIA; or (2) the total of the interests of each beneficiary, with each such interest limited to the SMSIA. Determining coverage requires a review of the trust agreement to ascertain each beneficiary's interest. Each such insurable interest is limited to the SMSIA, and the total of all these interests is compared with $1,250,000 (five times the SMSIA). The current rule provides coverage in the greater of these two amounts. The result would fall into a range from $1,250,000 to $1,750,000, depending on the precise allocation of trust interests among the beneficiaries.[70] In the NCUA's view, one of the key benefits of the final rule versus the current rule is greater clarity and predictability in share insurance coverage because a single formula is used to determine maximum coverage, and this formula will not depend upon the specific allocation of funds among beneficiaries.

F. Discussion of Comments

Overview of the Comments

The NCUA received 13 comments on the proposed rule, 11 of which provided relevant substantive feedback. Comments were received from individuals, a FICU, state credit union leagues and national trade associations, a law firm, and an association of state credit union supervisors. All 11 substantive comments supported the proposed rule, with a number providing additional feedback regarding potential revisions or other matters to contemplate further. As

[70] For example, if all the beneficiaries' interests were equal, coverage would be $250,000 x (7 beneficiaries) = $1,750,000. This amount is the maximum coverage possible under the current rule. Conversely, if a few beneficiaries had a large interest in the trust, the total of all beneficiaries' interests (limited to the SMSIA per beneficiary) could be less than $1,250,000, in which case the current rule would provide a minimum of $1,250,000 in coverage. Depending upon the precise allocation of interests, the amount of coverage provided would fall somewhere within this range.

described below, common issues commenters spoke to were parity with FDIC coverage, the merger of the trust account categories, the proposed trust calculation, and membership issues.

Parity with FDIC Coverage

Six commenters addressed the importance of parity with FDIC coverage. One deemed it crucial for maintaining consistency and fairness in the financial system. Another opined that if FDIC coverage is easier to understand or provides additional coverage, it could result in funds being moved to banks and could introduce reputational risk to the credit union system. A commenter noted that while parity is not reason enough to adopt a change, they recognized its importance, particularly because the public tends to be more familiar with the FDIC than the NCUA. As stated in both the proposed rule and this final rule, ensuring parity between the share insurance and deposit insurance regimes is an important basis for the NCUA making these changes to the trust account rules.

Effects of the Changes on Understanding of the Trust Rules

Commenters universally believed the proposed amendments would make insurance coverage for trust accounts easier to understand. One commenter said trust accounts are already more complex than individual share accounts, and the current rules increase the likelihood of misunderstanding coverage by adding complexity with different rules and calculation methods due to the type of trust, number of beneficiaries, or other factors. A national trade association said its member FICUs have reported the current system, with distinct rules for revocable and irrevocable trusts, has caused significant confusion and led to a high volume of complex inquiries. The association believed the proposal will offer clear and straightforward guidance for FICUs, their employees, and their accountholders. One commenter emphasized that making share insurance coverage easier to understand is important because the public is generally less

familiar with the NCUA than the FDIC. The commenter supported changes to enhance visibility or, at a minimum, to make it easier for a consumer to understand the similarities between FDIC and NCUA coverage.

The Board appreciates commenters' confirmation that the changes will make share insurance for trust accounts easier to understand. In the proposal, the Board also stated it believes that under the proposal accountholders generally would have the information necessary to readily calculate share insurance coverage for their trust accounts, better allowing them to understand insurance coverage for their trust accounts. However, the Board also asked if there were instances where an accountholder would not likely have the necessary information.

Two commenters cited instances where accountholders may lack the necessary information to calculate share insurance coverage under the proposal. The first cited an accountholder whose trust is not readily accessible, such as if it is old and maintained by a third party; this commenter suggested the NCUA apprise accountholders of the rule and remind them to find necessary documents. The second said complex trust structures or changes in beneficiaries could cause a lack of necessary information, particularly if the accountholder does not have immediate access to updated details. The commenter believed this could make determining the beneficiaries challenging, particularly in trusts involving multiple generations or those set up for estate planning.

The Board agrees with commenters that fact-specific circumstances related to individual accountholders' trust accounts may result in individual situations where an accountholder lacks the necessary information to readily calculate their share insurance coverage. However, the situations described, and others like them, relate to complexities in accountholders' individual trust arrangements that would be difficult or impossible to ameliorate in regulations governing share insurance. Instead, it is up to accountholders and those maintaining these trusts to ensure their understanding of them, so they can apply the share insurance regulations to them in

evaluating their share insurance coverage. The Board agrees with the commenter that requested that the NCUA apprise accountholders of the rule changes and remind them to locate necessary documents. The NCUA will be providing publicly available resources to notify accountholders of the rule changes and explain them. In doing so, the NCUA will also reiterate the importance of understanding trust arrangements and maintaining necessary trust documents.

Merger of the Trust Categories

Seven commenters specifically supported merging the revocable and irrevocable trust account categories. Commenters believed this would reduce confusion, minimize the number of questions to the NCUA, reduce regulatory burden, and improve operational processes. One national trade association said its member FICUs did not anticipate the merger would result in reduced insurance coverage in practice. However, they asked the NCUA to track any such outcomes in liquidations and suggested revisiting the rule if stakeholder input or liquidations show reduced coverage.

The Board agrees the merger of the trust categories should simplify insurance coverage of trust accounts, reduce confusion, and alleviate burden on FICUs, accountholders, and the NCUA. While the Board appreciates the suggestion to track outcomes in liquidations where the merger of the trust categories causes a reduction in insurance coverage, it declines to create a formal process for doing so. Simultaneously calculating insurance coverage under the current and new trust rules would negate many of the efficiency and simplification benefits the changes are intended to provide. While there will not be a formal mechanism for tracking such results, should the agency become aware of the trust account changes creating an unanticipated level of decreased share insurance coverage, either during evaluation of liquidations or through public input, the Board will consider whether additional changes are needed, in consultation with the FDIC.

Methodology for Calculating Trust Coverage

Six commenters specifically supported the proposed method for calculating trust account coverage. Commenters believed the more straightforward uniform method would enhance transparency, as well as FICU and member understanding; make it easier to inform members of their coverage; provide consistency with FDIC coverage; and benefit from FICUs and members being already familiar with it. One national trade association said its member FICUs did not think the $1,250,000-per-grantor cap was too low, as the vast majority of accounts are well below that level, but did ask the NCUA to track liquidations to ensure the cap is not too low. Additionally, one commenter suggested clarifying in the final rule that a trust with more than one grantor — such as a husband and wife — would have maximum coverage of $1,250,000 per grantor.

The Board agrees with commenters that the calculation method should provide the described benefits. The Board also agrees the $1,250,000-per-grantor cap is unlikely to be too low.[71] However, as the commenter requested, the agency does plan to continue to track uninsured amounts in liquidations, if any, and can explore further changes should it become warranted. Finally, the Board believes the proposed rule was clear that a single grantor is eligible for a maximum of $1,250,000 for all their trust interests. However, it reiterates that is the case here. In other words, where a husband and wife maintained one account at a FICU, a co-owned revocable trust account with five named eligible beneficiaries, the account would be eligible for up to $1,250,000 per grantor, for a total of $2,500,000.

Examples of Trust Account Coverage

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[71] *See* Average Inheritance: How Much Are Retirees Leaving to Heirs? | Boldin (stating that the median size of a trust fund is around $285,000), citing the U.S. Federal Reserve's Survey of Consumer Finances (SCF)," Nov. 2023.

One commenter encouraged the NCUA to maintain communications with FICUs to ensure its examples sufficiently cover ownership structures implemented by members. The Board agrees the NCUA should communicate with FICUs about this issue and the agency will do so.

Effects on Call Report Filings

One commenter was concerned that reporting of insured shares on the Call Report is inaccurate. The commenter said FICU computer systems tend not to code trust accounts correctly for reporting insured shares, causing them to go unreported as insured shares or to be missing some beneficiaries. The commenter said many FICUs do not include beneficiaries in their computer systems and only maintain that data in paper records, which excludes many beneficiaries that would be included in reporting insured shares. The commenter believed it might be more accurate to take total outstanding shares and apply a factor to compute insured shares. While outside the scope of this rulemaking, this concern will be evaluated by staff.

Effects on Other Types of Accounts

In the proposal, the NCUA asked if there are types of trusts not described in the proposal whose funds maintained in FICU accounts would be affected by the proposed changes. One commenter said the proposal might not fully address trusts like charitable remainder trusts or special needs trusts, noting they have unique characteristics that could affect insurance coverage. The commenter also said trusts operating under state-specific laws or provisions might have aspects not contemplated in the rule, necessitating a broader consideration.

As the commenter noted, many trusts operate under state-specific laws, which can vary. As such, the share insurance regulations could not fully accommodate each and every type of trust. With regard to special needs trusts and charitable remainder trusts, coverage will depend

upon the exact details of each trust arrangement, including whether the trust names eligible beneficiaries.

Comments Addressing Other Changes to the Trust Rules

Two commenters supported the proposal to eliminate certain requirements in the current trust account rules as a pragmatic step towards reducing unnecessary regulatory burdens, leading to more efficient operations and improved customer experience. One commenter supported the proposed removal of the appendix to part 745 in favor of updates to NCUA guidance. The commenter believed this would make it easier for members to understand share insurance coverage.

Continued Application of the Current Rules to Existing Accounts or a Delayed Effective Date

In the proposal, the Board noted it prefers a delayed effective date for the trust account changes over continuing the coverage under current rules for accounts existing at the time the final rule goes into effect. This situation was referred to as "grandfathering" accounts under the current rules in the proposal. It is referred to as "legacy coverage" in this final rule. The proposal reasoned that providing both legacy coverage for existing accounts and separate coverage under the new rules for new accounts would result in significantly greater complexity for the period when two sets of rules could apply to accounts — especially in conducting liquidations. The Board's belief was and remains that a delayed implementation date allows stakeholders to make necessary adjustments for the new rules, without the complications of two sets of rules coexisting. In recognition that there could be instances that may not be easily restructured without adverse consequences to the accountholder, such as trusts holding share certificates or other account relationships, the proposal asked whether there are fact patterns where legacy coverage for existing accounts may be appropriate. The proposal also asked if this

approach would be appropriate with respect to the proposed rule's coverage limit of $1,250,000 per FICU for an accountholder's funds held in trust accounts.

Three commenters supported some form of legacy coverage for existing accounts. Two urged providing legacy coverage at current levels for existing trust accounts, such as if a member is the grantor of both a revocable and an irrevocable trust at the same FICU. One of these commenters argued that consumers with open accounts expect to maintain their current coverage, providing legacy coverage for existing accounts should not increase loss risk to the Share Insurance Fund relative to current policy, and a reduction in coverage represents a reputational risk to NCUA share insurance that could reduce public confidence in the credit union system. The other said that providing legacy coverage for existing accounts may increase complexity in liquidations but believed it may be the best solution to avoid adverse consequences to members. A third commenter said this legacy coverage may be appropriate in certain scenarios to protect members, such as in trusts with long-term investments like share certificates where restructuring could lead to financial losses, or in complex estate planning trusts requiring significant legal and administrative changes.

Four commenters supported a delayed effective date. One said that if the NCUA avoids providing legacy coverage for existing accounts, it should adopt an appropriately delayed implementation that recognizes the potential hardships and allows stakeholders to make necessary changes. Another believed that even with legacy coverage for existing accounts, a delayed implementation date would be essential for FICUs to review trust relationships and notify any negatively affected members. A third opposed providing legacy coverage for existing accounts, reasoning the intricacies involved could present challenges. The commenter also stated, "concerns arise regarding the potential limitations of studying credit unions, as these may not fully capture the dynamics of larger credit unions, potentially leading to adverse effects on the relationships between [m]embers and credit unions."

The Board has strongly considered the comments received and the effects the new trust account rules will have on accountholders. The Board continues to believe providing legacy coverage for existing accounts poses complications and burdens to FICUs, accountholders, and the NCUA that make such a system unworkable. The Board believes that by providing a substantially delayed effective date that is in excess of two years, FICUs and their accountholders should have enough time to make any needed changes to their accounts to ensure adequate share insurance coverage. Further, the Board remains doubtful the changes will result in reduced coverage in most instances.[72] Providing a delay in effect for the changes that matches the one the FDIC provided to insured depository institutions and their accountholders should provide both FICUs and their accountholders with sufficient time to complete any necessary adjustments.

Membership

Several commenters addressed the membership requirements for trust accounts. One commenter advocated simplifying membership requirements to establish a more straightforward approach with the goal of redefining the criteria determining the eligibility of individuals or entities for share insurance coverage, especially in the context of trust accounts. One commenter said membership should be satisfied for trust accounts if at least one member is on the account.

One commenter expressed support for the NCUA's efforts to simplify share insurance coverage but believed that meeting the agency's goals of providing clarity to FICUs and members and of providing parity with the FDIC's treatment of trust accounts required clarifying membership requirements for two types of accounts: (1) revocable trust accounts where not all settlors are members; and (2) irrevocable trust accounts where no settlors are members.

[72] *See* footnote 71.

On revocable trust accounts where not all settlors are members, the commenter believed the NCUA should provide coverage to nonmember co-owners of a revocable trust account. The commenter correctly noted the NCUA's position has long been that joint accounts where there is a right of survivorship, which do not have beneficiaries, qualify for share insurance for interests of both depositors even where there is a nonmember co-owner; whereas a nonmember co-owner's interest in a revocable trust account, such as a payable-on-death account, is not eligible for share insurance. The commenter believed the addition of a payable-on-death beneficiary should not defeat the extension of share insurance to a nonmember co-owner. The commenter also said this position is not explicitly contained in the regulations and is only documented in the NCUA's Share Insurance Estimator FAQ, which is not legally binding. The commenter emphasized that the FDIC clearly delineates that all payable-on-death beneficiaries are treated the same for insurance purposes, and the commenter believed the divergence from FDIC regulations is contrary to the NCUA's parity goal. The commenter concluded the proposed rule provides an opportunity to provide clear instructions for calculating coverage for joint accounts with payable-on-death beneficiaries or any other revocable trust account with one or more nonmember settlors.

To clarify, the NCUA's longstanding position is that nonmembers may be joint owners of a joint account with a right of survivorship (an account with no beneficiaries) and have an insurable interest if one joint owner of the account is a member. This position is based on a specific statutory provision that allows for nonmembers to be co-owners with a member if the account is held with a right of survivorship.[73] In other words, the NCUA provides share insurance coverage to nonmember owners of joint accounts (an account with no beneficiaries) where there is a right of survivorship based upon a statutory exception to the normal limitation

[73] *See* 12 U.S.C. 1759(a).

that the NCUA only provides coverage to members. This coverage for nonmember owners of joint accounts with a right of survivorship (an account with no beneficiaries) is expressly provided for in the NCUA's regulations.[74]

Conversely, the NCUA has not recognized a statutory exception for providing share insurance coverage to nonmember co-owners of revocable trust accounts, which are different from joint accounts with no beneficiaries under the share insurance regulations. Unlike the coverage for nonmember joint account owners expressly provided for in the NCUA's regulations, the NCUA's regulations do not contain any provision related to nonmember co-owners of revocable trust accounts that negates the normal limitation that share insurance coverage is provided to members. Instead, the agency's longstanding position has been that co-owned revocable trust accounts are different from joint accounts held with a right of survivorship; and as such, they require co-owners (settlors of the trust) to be members to receive insurance coverage for their interests in the revocable trust account. It is also worth noting that while parity with FDIC coverage is an important aim, the NCUA's coverage is generally limited to member accounts. Because the FDIC coverage is not so limited, instances will inevitably occur where coverage is not parallel.

In addressing irrevocable trust accounts where no settlors are members, the commenter erroneously concluded the NCUA's position as to membership requirements for irrevocable trust accounts would pose an issue under the proposal. The commenter correctly noted that under the current rules, irrevocable trust accounts can be established as long as either all settlors or all beneficiaries are members of the FICU. The commenter concluded that because the proposal would calculate coverage for irrevocable and revocable trusts in aggregate to $1.25 million per grantor, the NCUA would not provide coverage to an account where the settlors were not

[74] *See* 12 CFR 745.8(e).

members, but all beneficiaries were members. This conclusion is incorrect. While coverage would be limited to $1.25 million in aggregate for a grantor, any interest related to an irrevocable trust where all the beneficiaries were members would still be insured based on the beneficiaries' membership status. The limitation would only be related to interests for one grantor being limited to $1.25 million, irrespective of the grantor's lack of membership.

Other Comments

Two commenters agreed the changes should help facilitate the prompt payment of share insurance. One commenter noted that, while NCUA Board Members will often accurately say no member has ever lost one penny of funds insured by the Share Insurance Fund, members have lost funds they thought were insured due to misunderstanding the coverage rules. As noted, the Board's goal with this rulemaking is to reduce this confusion.

In response to the NCUA's request for input regarding empirical information the agency should consider to help it understand the effects of its proposed rule, a commenter provided an article detailing an empirical study of the jurisdictional competition for trust funds. Of most relevance, the article notes the difficulty of empirically studying inter vivos (living) trusts due to various factors, including these trusts' private nature and complexity.

III. Amendments to Mortgage Servicing Account Rule

A. Policy Objectives

The NCUA's regulations governing share insurance coverage include specific rules on accounts maintained at FICUs by mortgage servicers.[75] These rules are intended to be easy to understand and apply in determining the amount of share insurance coverage for a mortgage

[75] 12 CFR 745.3(a)(3).

servicer's account (MSA). The NCUA generally strives to maintain parity with FDIC's regulations in furtherance of this aim.

The NCUA proposed an amendment to its rules governing insurance coverage for accounts maintained at FICUs by mortgage servicers that consist of mortgagors' principal and interest payments. The proposed change would mirror a change made by the FDIC in early 2022 that became effective in April 2024, and which was intended to address a servicing arrangement that is not addressed in the current rules.[76] Specifically, some servicing arrangements may permit or require servicers to advance their own funds to the lenders when mortgagors are delinquent in making principal and interest payments, and servicers might commingle such advances in the MSA with principal and interest payments collected directly from mortgagors. The FDIC reasoned that the factors that motivated the FDIC to establish its current rules for MSAs, which the NCUA also adopted and are further described below, weigh in favor of treating funds advanced by a mortgage servicer to satisfy mortgagors' principal and interest obligations to the lender as if such funds were collected directly from borrowers. The FDIC also noted it seeks to avoid uncertainty concerning the extent of deposit insurance coverage for such accounts. The proposed rule noted the NCUA concurs with the importance of avoiding uncertainty regarding the extent of insurance coverage and believes that an important aspect of avoiding uncertainty is maintaining parity between the share insurance and deposit insurance regimes.

After reviewing the comments received on this proposed change, the Board has decided to finalize the change as proposed. As discussed further below, the Board has also decided to make this change effective 30 days after publication in the *Federal Register*.

B. Background and Need for Rulemaking

[76] 87 FR 4455 (Jan. 28, 2022).

The NCUA's rules governing coverage for MSAs were last amended in 2008, which corresponded to changes made by the FDIC. More specifically, in 2008 the FDIC recognized securitization methods and vehicles for mortgages had become more complex, exacerbating the difficulty of determining the ownership of deposits consisting of principal and interest payments by mortgagors and extending the time required to make a deposit insurance determination for deposits of a mortgage servicer in the event of an insured depository institution's (IDI's) failure.[77] The FDIC expressed concern that a lengthy insurance determination could lead to continuous withdrawal of deposits of principal and interest payments from IDIs and unnecessarily reduce a funding source for such institutions. The FDIC therefore amended its rules to provide coverage to lenders based on each mortgagor's payments of principal and interest into the MSA, up to its standard maximum deposit insurance amount per mortgagor (currently $250,000). The FDIC did not amend the rule for coverage of tax and insurance payments, which continued to be insured to each mortgagor on a pass-through basis and aggregated with any other deposits maintained by each mortgagor at the same IDI in the same right and capacity. The NCUA agreed that this treatment of principal and interest payments provided greater and fairer coverage for credit union members and decided to apply the same approach in its share insurance rules.[78]

Importantly, the 2008 amendments to the rules for MSAs did not provide for the fact that servicers may be required to advance their own funds to make payments of principal and interest on behalf of delinquent borrowers to the lenders. However, in its recent rulemaking the FDIC identified that advancing their own funds is required of mortgage servicers in some instances. For example, the FDIC noted that some IDIs identified challenges to implementing certain

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[77] *See* 73 FR 61658, 61658-59 (Oct. 17, 2008).
[78] 73 FR 62856, 62857 (Oct. 22, 2008).

recordkeeping requirements with respect to MSA deposit balances because of the way in which servicer advances are accounted for and administered.[79]

The NCUA's current rules, which mirror the FDIC's rules that were in effect until April 1, 2024, provide coverage for principal and interest funds only to the extent "paid into the account by the mortgagors"; they do not provide coverage for funds paid into the account from other sources, such as the servicer's own operating funds, even if those funds satisfy mortgagors' principal and interest payments. As a result, advances are not provided the same level of coverage as other deposits in an MSA consisting of principal and interest payments directly from the borrower, which are insured up to the SMSIA for each borrower. Instead, the advances are aggregated and insured to the servicer as corporate funds for a total of $250,000. In adopting changes to its rule in early 2022, the FDIC expressed concern that this inconsistent treatment of principal and interest amounts could result in financial instability during times of stress, and could further complicate the insurance determination process, a result that is inconsistent with their policy objective. As noted in the proposal, the NCUA shares these concerns and believes it is important that parity is maintained between the insurance regimes.

C. Final Rule

The NCUA is finalizing the rule as proposed with no changes. The final rule will amend the rules governing coverage for funds in MSAs to provide parity with the FDIC's regulation and provide consistent share insurance treatment for all MSA balances held to satisfy principal and interest obligations to a lender, regardless of whether those funds are paid into the account by borrowers or paid into the account by another party (such as the servicer) to satisfy a periodic

[79] The FDIC noted that, to fulfill their contractual obligations with investors, covered IDIs maintain mortgage principal and interest balances at a pool level and remittances, advances, advance reimbursements, and excess funds applications that affect pool-level balances are not allocated back to individual borrowers.

obligation to remit principal and interest due to the lender. Under the final rule, accounts maintained by a mortgage servicer in an agency, custodial, or fiduciary capacity, which consist of payments of principal and interest, will be insured for the cumulative balance paid into the account to satisfy principal and interest obligations to the lender, whether paid directly by the borrower or by another party, up to the limit of the SMSIA per mortgagor. Mortgage servicers' advances of principal and interest funds on behalf of delinquent borrowers will therefore be insured up to the SMSIA per mortgagor, consistent with the coverage rules for payments of principal and interest collected directly from borrowers.

The composition of an MSA attributable to principal and interest payments will also include collections by a servicer, such as foreclosure proceeds, that are used to satisfy a borrower's principal and interest obligation to the lender. In some cases, foreclosure proceeds may not be paid directly by a mortgagor. The current rule does not address whether foreclosure collections represent payments of principal and interest by a mortgagor. Under the final rule, foreclosure proceeds used to satisfy a borrower's principal and interest obligation will be insured up to the limit of the SMSIA per mortgagor.

The final rule does not make any changes to the share insurance coverage provided for MSAs comprised of payments from mortgagors of taxes and insurance premiums. Such aggregate escrow accounts are held separately from the principal and interest MSAs, and the funds therein are held for the mortgagors until such time as tax and insurance payments are disbursed by the servicer on the borrower's behalf. Under the final rule, such funds will continue to be insured based on the ownership interest of each mortgagor in the account and aggregated with other funds maintained by the mortgagor at the same FICU in the same capacity and right.

The Board is opting to make this change effective 30 days after publication in the *Federal Register*. Given the change provides more expansive coverage and should not impose

additional burden on FICUs or accountholders, the Board does not see a reason to delay its effect.

D. Discussion of Comments

Six commenters expressly supported the proposed rule's changes to insurance of MSAs. In terms of the benefits cited, four commenters noted the importance of parity with FDIC coverage. Three cited the benefits of a standardized approach and fair and equitable treatment. Five noted the greater clarity provided for FICUs and members. Two said the change represents improved protection of the interests of all parties, aligns with best practices, and offers additional security. One stressed the change simplifies the complex landscape and enables FICUs to manage MSAs more confidently and efficiently. That commenter believed the change was crucial for maintaining the integrity and reliability of the MSA system, as the change recognizes the practical realities of servicing arrangements and the various sources of funds that may be used to satisfy borrowers' obligations. The commenter thought the inclusion of foreclosure collections particularly important, as the current rule does not address it. Two commenters stated the change would help promote financial stability. One said the change would reduce financial institutions' counterparty risk exposure, which also reduces liquidity risk to the FICU holding the MSAs. Another said providing insurance for these advanced funds supports the mortgage market and broader financial system's stability.

One national trade association reported its FICU members expressed initial concerns with increased Share Insurance Fund costs due to larger insured balances from covering funds paid by mortgage servicers. However, after members reviewed the potential effect in greater detail, they concluded any such increase in cost would be nominal. The commenter urged the NCUA to monitor this change to ensure it does not lead to an excessive increase in Share Insurance Fund-related liquidation costs. The Board concurs that this change should only nominally increase any

Share-Insurance-Fund related liquidation costs. However, the agency will continue to monitor such costs.

Only one commenter addressed the NCUA's request regarding whether a delayed effective date is necessary. The commenter believed a delayed effective date appropriate but had no concern with an earlier date. As discussed, the Board is opting to make this change effective 30 days after publication in the *Federal Register*. The comments received do not give the Board the impression that commenters were opposed to the change becoming effective without delay. Further, given the change only clarifies and expands share insurance coverage, the NCUA does not believe the change should impose any burden on FICUs or accountholders.

IV. Recordkeeping Requirements

A. Policy Objectives

The NCUA's regulations governing share insurance coverage include general principles applicable in determining insurance of accounts.[80] Among these general principles are provisions addressing recordkeeping.[81] The NCUA intends for these provisions to clearly articulate the records the agency will look to when evaluating insurance coverage. As discussed in more detail below, over time it has become apparent that the recordkeeping provisions do not clearly address all situations and may be especially unclear as to accounts maintained by an agent, custodian, fiduciary, or other party on behalf of a member or beneficial owner eligible to maintain an insured account at a FICU. To better address these situations, the NCUA proposed to amend the recordkeeping requirements.

[80] 12 CFR 745.2.
[81] 12 CFR 745.2(c).

After reviewing the comments received on this proposed change, the Board has decided to finalize the change as proposed. As discussed further below, the Board has also decided to make this change effective 30 days after publication in the *Federal Register*.

B. Background and Need for Rulemaking

Section 745.2(c) of the NCUA's regulations addresses general recordkeeping requirements. Other recordkeeping requirements applicable to specific account types are addressed as needed in the relevant sections of part 745. Current § 745.2(c)(1) provides that, as a general matter, the account records of the FICU shall be conclusive as to the existence of any relationship pursuant to which the funds in the account are deposited and on which a claim for insurance coverage is founded. Examples would be trustee, agent, custodian, or executor. No claim for insurance based on such a relationship will be recognized in the absence of such disclosure.

Section 745.2(c)(2) provides that, if the account records of a FICU disclose the existence of a relationship which may provide a basis for additional insurance, as required under § 745.2(c)(1), the details of the relationship and the interest of other parties in the account must be ascertainable either from the records of the FICU or the records of the member maintained in good faith and in the regular course of business. It is this provision that has raised questions regarding accounts maintained by an agent, fiduciary, or similar party. The NCUA has received several questions regarding whether records maintained by an agent, fiduciary, or similar third party on behalf of the member or beneficial owner eligible to maintain an insured account would qualify as the "records of the member." Due to the frequency with which these agent or fiduciary arrangements will involve a party other than the FICU or member maintaining records on the FICU's or member's behalf, the NCUA proposed to add language explicitly clarifying that such records, when maintained in good faith and in the regular course of business, can be

looked to when evaluating the details of the relationship and the interest of other parties in the account at the FICU.

C. Final Rule

The NCUA is adopting the proposed rule as proposed with no changes. Section 745.3(a)(2) of the NCUA's current regulations provides that when an account is held by an agent or nominee, funds owned by a principal and deposited in one or more accounts in the name or names of agents or nominees shall be added to any individual account of the principal and insured up to the SMSIA in the aggregate. The NCUA will also generally look to the principal or beneficial owner for satisfying the membership requirement or other eligibility to maintain an insured account at the FICU. As such, records maintained by an agent or nominee on behalf of the member principal or beneficial owner may not clearly be considered "records of the member" for the purpose of ascertaining their interests in the account under current § 745.2(c)(2).

The NCUA has previously issued a legal opinion stating that where an agent or custodian "has an agreement with the beneficial owner/member to maintain custody of the beneficial owner/member's records, [the] NCUA would consider those records to be 'records of the member' within the meaning of 12 C.F.R. 745(c)(2)."[82] However, as the NCUA acknowledged in the proposed rule, it would be beneficial for the regulation to more clearly address this situation to allow the details of the relationship and the interests of other parties in the account to be ascertainable either from the account records of the FICU or from records maintained, in good faith and in the regular course of business, by the member or by some person who or entity that has undertaken to maintain such records for the member.

[82] NCUA Legal Op. 97-0909 (Feb. 6, 1998), *available at* https://www.ncua.gov/regulation-supervision/legal-opinions/1997/pass-through-insurance.

Accordingly, the NCUA is adopting this change as proposed. This change will provide greater clarity, particularly in the event of multi-tiered fiduciary relationships, and would more closely compare to language previously adopted by the FDIC.[83] Importantly, the NCUA retains discretion to determine when records are maintained on behalf of a member, in good faith and in the regular course of business. Ultimately, the NCUA must be able to establish ownership interests in the account by following the chain of records maintained by parties at each level of the relationship from the account records maintained at the FICU.

Additionally, § 745.2(c)(3) of the current regulations provides that the account records of a FICU in connection with a trust account shall disclose the name of both the settlor (grantor) and the trustee of the trust and shall contain an account signature card executed by the trustee. This requirement goes beyond the recordkeeping requirements of § 745.2(c)(1) through (2) and poses an unnecessary burden on FICUs and their members. Further, the FDIC previously eliminated a similar requirement.[84] To eliminate unnecessary recordkeeping complexity and provide parity with the FDIC, the NCUA is eliminating current § 745.2(c)(3), as was proposed.

Section 745.2(c)(4) states that the interests of the co-owners of a joint account shall be deemed equal, unless otherwise stated on the insured credit union's records in the case of a tenancy in common. As proposed, the NCUA is not making any substantive amendments to this provision but is moving it to § 745.2(c)(3) given the elimination of the current requirement in that section.

Finally, § 745.14(a)(2) notes that interest on lawyers' trust accounts (IOLTAs) and other similar escrow accounts are subject to the recordkeeping requirements of § 745.2(c)(1) and (2). In doing so, § 745.14(a)(2) provides an example of how the details of the relationship between the attorney or escrow agent and their clients and principals must be ascertainable from the

[83] 12 CFR 330.5(b)(2).
[84] 51 FR 21137 (June 11, 1986).

records of the FICU or from records maintained, in good faith and in the regular course of business, by the member attorney or member escrow agent administering the account. As was proposed, the final rule amends this description to conform to the change to § 745.2(c)(2) to explicitly state that the records detailing the relationship and the interest of other parties in the account must be maintained, in good faith and in the regular course of business, by: (1) the FICU; or (2) the member attorney or member escrow agent, or a person or entity acting on their behalf.

D. Discussion of Comments

All seven commenters who addressed the proposed recordkeeping requirement changes supported the changes. Two commenters stated requiring the details of a relationship and the interests of other parties in an account to be ascertainable from records maintained in good faith is a sound practice, which should ensure transparency and accountability. One said the proposal would provide an approach consistent with FDIC pass-through deposit insurance expectations for various types of "other similar escrow account" that may exist, including sweep accounts. One commenter noted many FICU members rely on trusted third parties for recordkeeping as part of their estate planning. The commenter also believed this change should reduce inquiries to the NCUA.

One commenter noted support for the proposed removal of the requirement that the account records of a FICU in connection with a trust account shall disclose the name of both the grantor and the trustee of the trust and shall contain an account signature card executed by the trustee. The commenter agreed the requirement poses an unnecessary burden on FICUs and members.

Four commenters said the change provides FICUs adequate clarity as to the records the NCUA will look to when evaluating the details of account relationships and the interests of other

parties in accounts maintained at FICUs. One urged the Board to finalize the change as proposed. Another understood there to be only limited confusion regarding the issue but noted support for reduced burden and enhanced usability of the rules.

In response to the proposal's questions on the subject, one commenter said that, while the proposed change is a significant step towards clarity and provides essential guidance in complex account management scenarios, there may be alternative or additional steps that could further align with the NCUA's policy objectives, including the following: (1) adopting a definition of "account records" similar to the FDIC's definition of "deposit account records" to standardize the documentation framework, ensure uniformity, and reduce ambiguity in what constitutes necessary records; (2) adopting specific detailed provisions for multi-tiered fiduciary relationships akin to those adopted by the FDIC, which would help clarify the responsibilities and recordkeeping obligations in complex arrangements involving multiple parties; and (3) adopting broader definitions and illustrative examples for various account relationships, such as joint accounts or trusts with multiple beneficiaries. The commenter said it is imperative to ensure the recordkeeping regulations remain relevant and effective as technology advances and banking evolves into a more digital domain. The commenter suggested adding a periodic review and update clause for the recordkeeping requirements to ensure regulations stay current with the evolving banking practices. The commenter believed this would be especially pertinent for handling international accounts or accounts involved in complex transactions.

The Board will take these additional recommendations into consideration as it continues to evaluate ways to improve the NCUA's share insurance regulations. The Board notes that NCUA staff routinely review rules for effectiveness, including through its annual review of one-third of its regulations and the Economic Growth and Regulatory Paperwork Reduction Act (also known as EGRPRA) process that the NCUA voluntarily undertakes every ten years.

The proposal also requested comment on whether the NCUA should consider adoption of heighted recordkeeping requirements, akin to those the FDIC adopted in part 370 of its regulations, to facilitate prompt payment of insurance when large institutions fail. Six commenters addressed the possibility. None of the commenters supported adoption of such requirements, but some did provide recommendations if the NCUA were to adopt a similar regime. The Board will take this feedback into consideration as it further studies the possibility of proposing similar requirements.

The proposed rule asked about whether there was any reason to delay the effective date of the recordkeeping change. This question intended to elicit comments on whether a delayed effective date for the proposed recordkeeping requirements changes would allow more flexibility when evaluating share insurance coverage by clarifying that the NCUA can look to records maintained by a third party on a member's behalf if they are maintained in good faith and in the regular course of business. One commenter believed a delayed effective date for those changes appropriate but had no concern with an earlier date.

Another commenter seemingly interpreted this question as asking about a delayed effective date for potential NCUA adoption of a regime similar to the FDIC's, as was asked about in the previous question in the proposal, rather than about a delayed effective date for the proposed changes to the recordkeeping requirements. This commenter believed timing pivotal and suggested the NCUA grant FICUs an extended period to comply because of the intricacies of compliance, especially in terms of recordkeeping, and need to effectively adapt FICU processes and systems without experiencing undue burden.[85] Given the proposed changes would not increase burden on FICUs or members, but instead clarify that the NCUA will look to more

[85] This commenter specifically responded to this question. However, it seems likely the commenter interpreted the question as asking whether a delayed effective date would be appropriate for adopting a part 370 type regime, which was asked about in the preceding question.

expansive records to evaluate parties' interest in insured accounts, the concerns the commenter raised do not seem applicable to the changes proposed.

As discussed, the Board is opting to make this change effective 30 days after publication in the *Federal Register*. The comments received do not give the Board the impression that commenters were opposed to the change becoming effective without delay. Further, given the change only clarifies that the NCUA has additional flexibility to look to additional records to determine parties' interests in an account, the Board does not believe that it will impose any burden on FICUs or their members. The Board believes that clarifying that the NCUA has this greater discretion to look to additional records will only provide benefit.

V. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis that describes the effect of the final rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic effect on a substantial number of small entities (defined for the purposes of the RFA to include credit unions with assets less than $100 million)[86] and publishes its certification and a short, explanatory statement in the *Federal Register* together with the rule.

The Board fully considered the potential economic effect of the changes made by this final rule during its development. As noted in the preamble, the final rule simplifies the NCUA's current share insurance regulations covering types of trust accounts. It also provides more flexibility on the coverage of MSAs. Finally, it explicitly provides for additional flexibility in

[86] *See* 80 FR 57512 (Sept. 24, 2015).

what records the NCUA can look to when determining the details of account relationships and various parties' interests in the accounts.

In short, the Board believes the principal consequence of the final rule will be to streamline its administrative procedures for insurance payouts on trust accounts when FICUs fail. Though the final rule will require FICUs and their members to be familiar with the new trust rules and the coverage limits imposed on trust accounts, the NCUA believes this will not impose any new significant burden on FICUs, may ease some existing requirements, and should reduce the complexity of questions FICUs receive from their members on share insurance coverage.

Additionally, FICUs and their members are familiar with the new formula as it is already applied to revocable trust accounts with five or fewer beneficiaries. The formula is also simpler to understand and implement than the previous rules governing revocable trust accounts with six or more beneficiaries and irrevocable trusts.

Ultimately, the changes to the rule governing coverage of MSAs and the changes to the recordkeeping requirements should only provide greater flexibility for coverage of these accounts and should not cause any new burden on FICUs or their members. Accordingly, the NCUA certifies that this final rule will not have a significant economic effect on a substantial number of small FICUs.

B. 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 modifies an existing burden.[87] For the purposes of the PRA, a paperwork burden may take the form of a reporting, disclosure,

[87] 44 U.S.C. 3507(d).

or recordkeeping requirement, each referred to as an information collection. The NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The final rule does not contain information collection requirements that require approval by OMB under the PRA. The final rule will not create new or modify any existing paperwork burdens. Rather, the final rule will simplify the share insurance regulations by merging the revocable and irrevocable trust account categories into one trust account category and applying a simpler, common calculation method to determine insurance coverage for funds held in revocable and irrevocable trust accounts. The final rule will also provide consistent share insurance treatment for all MSA balances held to satisfy principal and interest obligations to a lender, regardless of whether those funds are paid into the account by borrowers or paid into the account by another party (such as the servicer) to satisfy a periodic obligation to remit principal and interest due to the lender. Finally, the final rule will explicitly allow the NCUA, when undertaking share insurance determinations, to look to records held in the normal course of business that are maintained by parties other than a FICU and its members on their behalf. As such, no PRA submissions to OMB will be made with respect to this final rule.

a. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the effect of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the principles of the Executive Order to adhere to fundamental federalism principles. This final rule will only impact the NCUA's regulations related to share insurance coverage; it will not affect state law related to trust accounts. The final rule will also not alter the NCUA's relationship or division of responsibilities with state regulatory agencies or bodies because the final rule will affect the

NCUA's federal share insurance determinations exclusively. This final rule will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this final rule does not constitute a policy that has federalism implications for the purposes of the Executive Order.

b. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105-277, 112 Stat. 2681 (1998). Under this statute, if the agency determines the final regulation may negatively affect family well-being, then the agency must provide an adequate rationale for its implementation.

The NCUA has determined that the implementation of this rule will not negatively affect family well-being. The NCUA believes that any negative effect will be limited because the trust changes may not affect many accounts, and members or others maintaining those accounts will have time and notice to modify the accounts before the final rule goes into effect. Further, the MSA and recordkeeping changes offset negative effects because they will instead provide the NCUA more flexibility to provide share insurance coverage with respect to funds dedicated to pay loans and other obligations related to family homes and businesses. If the NCUA ultimately finds that the rule does have a negative effect as the statute describes, it believes the benefits that the preamble describes in simplifying coverage and potentially reducing costs for the NCUA and for FICUs would support implementing the rule.

c. Small Business Regulatory Enforcement Fairness Act (Congressional Review Act)

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) generally provides for congressional review of new agency rules that qualify as “major” under criteria specified in the Act.[88] The NCUA’s analysis indicates the rule falls short of qualifying as “major” under SBREFA’s criteria. As required by SBREFA, the NCUA is submitting this final rule and its economic impact analysis to OMB for concurrence on the “not major” determination. The NCUA also will file all other appropriate congressional reports.

List of Subjects in 12 CFR Part 745

Credit, Credit Unions, Share Insurance.

By the National Credit Union Administration Board on September 19, 2024.

____

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons discussed in the preamble, the Board is amending 12 CFR part 745 as follows:

PART 745—SHARE INSURANCE COVERAGE

1. The authority citation for part 745 continues to read as follows:

[88] 5 U.S.C. 801–804.

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; title V, Pub. L. 109-351;120 Stat. 1966.

2. The heading for part 745 is revised to read as set forth above.

§ 745.0 [Amended]

3. Amend § 745.0 by removing the words "and appendix".

4. Revise § 745.1 to read as follows:

§ 745.1 Definitions.

For the purposes of this part:

Account or *accounts* mean share, share certificate, or share draft accounts (or their equivalent under state law, as determined by the Board in the case of insured state-chartered credit unions) of a member (which includes other credit unions, public units, and nonmembers where permitted under the Act) in a credit union of a type approved by the Board which evidences money or its equivalent received or held by a credit union in the usual course of business and for which it has given or is obligated to give credit to the account of the member.

Member or *members* mean those persons enumerated in the credit union's field of membership who have been elected to membership in accordance with the Act or state law in the case of state-chartered credit unions. It also includes those nonmembers permitted under the Act to maintain accounts in an insured credit union, including nonmember credit unions and nonmember public units and political subdivisions.

Non-contingent interest means an interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031-7 of the Federal Estate Tax Regulations (26 CFR 20.2031-7) or any similar present worth or life expectancy tables which may be adopted by the Internal Revenue Service.

Political subdivision includes any subdivision of a public unit, as defined in paragraph (c) of this section, or any principal department of such public unit,

(1) The creation of which subdivision or department has been expressly authorized by state statute;

(2) To which some functions of government have been delegated by state statute; and

(3) To which funds have been allocated by statute or ordinance for its exclusive use and control. It also includes drainage, irrigation, navigation improvement, levee, sanitary, school or power districts and bridge or port authorities, and other special districts created by state statute or compacts between the states. Excluded from the term are subordinate or nonautonomous divisions, agencies, or boards within principal departments.

Public unit means the United States, any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, any territory or possession of the United States, any county, municipality, or political subdivision thereof, or any Indian tribe as defined in section 3(c) of the Indian Financing Act of 1974.

Standard maximum share insurance amount referred to as the "SMSIA" hereafter, means $250,000 adjusted pursuant to subparagraph (F) of section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(F)).

5. Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], amend § 745.2 by revising paragraph (c)(2) to read as follows:

§ 745.2 General principles applicable in determining insurance of accounts.

* * * * *

(c) * * *

(2) If the account records of an insured credit union disclose the existence of a relationship which may provide a basis for additional insurance, the details of the relationship and the interest of other parties in the account must be ascertainable either from the records of the credit union or the records of the member, maintained in good faith and in the regular course of business by the member or by some person who or entity that has undertaken to maintain such records for the member.

* * * * *

6. Amend § 745.2 by:

a. Revising paragraph (a);

b. Removing paragraph (c)(3);

c. Redesignating paragraph (c)(4) as paragraph (c)(3);

d. Removing paragraph (d); and

e. Redesignating paragraphs (e) and (f) as paragraphs (d) and (e).

The revision reads as follows:

§ 745.2 General principles applicable in determining insurance of accounts.

(a) *General.* This part provides for determination by the Board of the amount of members' insured accounts. The rules for determining the insurance coverage of accounts maintained by members in the same or different rights and capacities in the same insured credit union are set forth in the following provisions of this part. While the provisions of this part govern in

determining share insurance coverage, to the extent local law enters into a share insurance determination, the local law of the jurisdiction in which the insured credit union's principal office is located will control over the local law of other jurisdictions where the insured credit union has offices or service facilities.

* * * * *

7. Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], amend § 745.3 by revising paragraph (a)(3) to read as follows:

§ 745.3 Single ownership accounts.

(a) * * *

(3) *Mortgage servicing accounts.* Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments of principal and interest, shall be insured for the cumulative balance paid into the account by mortgagors, or in order to satisfy mortgagors' principal or interest obligations to the lender, up to the limit of the SMSIA per mortgagor. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of taxes and insurance premiums shall be added together and insured in accordance with paragraph (a)(2) of this section for the ownership interest of each mortgagor in such accounts.

* * * * *

8. Revise § 745.4 to read as follows:

§ 745.4 Trust accounts.

(a) *Scope and definitions.* This section governs coverage for funds held in connection with informal revocable trusts, formal revocable trusts, and irrevocable trusts. For the purposes of this section:

(1) *Informal revocable trust* means a trust under which deposited funds pass directly to one or more beneficiaries upon the owner's death without a written trust agreement, commonly referred to as a payable-on-death account, in-trust-for account, or Totten trust account.

(2) *Formal revocable trust* means a revocable trust established by a written trust agreement under which deposited funds pass to one or more beneficiaries upon the grantor's death.

(3) *Irrevocable trust* means an irrevocable trust established by statute or a written trust agreement, except as described in paragraph (e) of this section.

(b) *Calculation of coverage* — (1) *General calculation.* Deposited trust funds are insured in an amount up to the SMSIA multiplied by the total number of beneficiaries identified by each grantor, up to a maximum of five beneficiaries.

(2) *Aggregation for purposes of insurance limit.* Deposited trust funds that pass from the same grantor to beneficiaries are aggregated for the purposes of determining coverage under this section, regardless of whether those funds are held in connection with an informal revocable trust, formal revocable trust, or irrevocable trust.

(3) *Separate insurance coverage.* The share insurance coverage provided under this section is separate from coverage provided for other funds at the same federally insured credit union.

(4) *Equal allocation presumed.* Unless otherwise specified in the account records of the federally insured credit union, deposited funds held in connection with a trust established by multiple grantors are presumed to have been owned or funded by the grantors in equal shares.

(c) *Number of beneficiaries.* The total number of beneficiaries for trust funds deposited under paragraph (b) of this section will be determined as follows:

(1) *Eligible beneficiaries.* Subject to paragraph (c)(2) of this section, beneficiaries include natural persons, as well as charitable organizations and other non-profit entities recognized as such under the Internal Revenue Code of 1986, as amended.

(2) *Ineligible beneficiaries.* Beneficiaries do not include:

(i) The grantor of a trust; or

(ii) A person or entity that would only obtain an interest in the deposited funds if one or more named beneficiaries are deceased.

(3) *Future trust(s) named as beneficiaries.* If a trust agreement provides that trust funds will pass into one or more new trusts upon the death of the grantor(s) ("future trusts"), the future trust(s) are not treated as beneficiaries of the trust; rather, the future trust(s) are viewed as mechanisms for distributing trust funds, and the beneficiaries are the natural persons or organizations that shall receive the trust funds through the future trusts.

(4) *Informal trust account payable to member's formal trust.* If an informal revocable trust designates the account owner's formal trust as its beneficiary, the informal revocable trust account will be treated as if titled in the name of the formal trust.

(d) *Account records* — (1) *Informal revocable trusts.* The beneficiaries of an informal revocable trust must be specifically named in the account records of the federally insured credit union.

(2) *Formal revocable trusts.* The title of a formal trust account must include terminology sufficient to identify the account as a trust account, such as "family trust" or "living trust," or must otherwise be identified as a testamentary trust in the account records of the federally insured credit union. If eligible beneficiaries of such formal revocable trust are specifically named in the account records of the federally insured credit union, the NCUA shall presume the continued validity of the named beneficiaries' interest in the trust.

(e) *Deposited funds excluded from coverage under this section* — (1) *Revocable trust co-owners that are sole beneficiaries of a trust.* If the co-owners of an informal or formal revocable trust

are the trust's sole beneficiaries, deposited funds held in connection with the trust are treated as joint ownership funds under § 745.8.

(2) *Employee benefit plan deposits.* Deposited funds of employee benefit plans, even if held in connection with a trust, are treated as employee benefit plan funds under § 745.9.

§ 745.9-1 [Removed]

9. Remove § 745.9-1.

§ 745.9-2 [Redesignated as § 745.9]

10. Redesignate § 745.9-2 as § 745.9.

§ 745.9 [Amended]

11. Amend newly designated § 745.9 in paragraph (a) by removing the phrase ", in accordance with § 745.2 of this part".

§ 745.13 [Amended]

12. Amend § 745.13 by removing the words "the appendix".

13. Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], amend § 745.14 by revising paragraph (a)(2) to read as follows:

§ 745.14 Interest on lawyers trust accounts and other similar escrow accounts.

(a) * * *

(2) Pass-through coverage will only be available if the recordkeeping requirements of § 745.2(c)(1) of this part and the relationship disclosure requirements of § 745.2(c)(2) of this part are satisfied. In the event those requirements are satisfied, funds attributable to each client and

principal will be insured on a pass-through basis in whatever right and capacity the client or principal owns the funds. For example, an IOLTA or other similar escrow account must be titled as such, and the underlying account records of the insured credit union must sufficiently indicate the existence of the relationship on which a claim for insurance is founded. The details of the relationship between the attorney or escrow agent and their clients and principals must be ascertainable from the records of the insured credit union or from records maintained, in good faith and in the regular course of business, by the attorney or the escrow agent administering the account, or by some person who or entity that has undertaken to maintain such records for the attorney or escrow agent. The NCUA will determine, in its sole discretion, the sufficiency of these records for an IOLTA or other similar escrow account.

* * * * *

Appendix to Part 745 [Removed]

14. Remove Appendix to Part 745.