

## PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

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

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717.

Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. Revise § 701.19 to read as follows:

### § 701.19 Benefits for Employees of Federal Credit Unions.

(a) *General authority.* A federal credit union may provide employee benefits, including retirement benefits, to its employees and officers who are compensated in conformance with the Act and the bylaws, individually or collectively with other credit unions. The kind and amount of these benefits must be reasonable given the federal credit union's size, financial condition, and the duties of the employees.

(b) *Plan trustees and custodians.* Where a federal credit union is the benefit plan trustee or custodian, the plan must be authorized and maintained in accordance with the provisions of part 724 of this chapter. Where the benefit plan trustee or custodian is a party other than a federal credit union, the benefit plan must be maintained in accordance with applicable laws governing employee benefit plans, including any applicable rules and regulations issued by the Secretary of Labor, the Secretary of the Treasury, or any other federal or state authority exercising jurisdiction over the plan.

(c) *Investment authority.* A federal credit union investing to fund an employee benefit plan obligation is not subject to the investment limitations of the Act and part 703 or, as applicable, part 704, of this chapter and may purchase an investment that would otherwise be impermissible if the investment is directly related to the federal credit union's obligation or potential obligation under the employee benefit plan and the federal credit union holds the investment only for as long as it has an actual or potential obligation under the employee benefit plan.

(d) *Defined benefit plans.* Under paragraph (c) of this section, a federal credit union may invest to fund a defined benefit plan if the investment meets the conditions provided in that paragraph. If a federal credit union invests to fund a defined benefit plan that is not subject to the fiduciary responsibility provisions of part 4 of the

Employee Retirement Income Security Act of 1974, it should diversify its investment portfolio to minimize the risk of large losses unless it is clearly prudent not to do so under the circumstances.

(e) *Liability insurance.* No federal credit union may occupy the position of a fiduciary, as defined in the Employee Retirement Income Security Act of 1974 and the rules and regulations issued by the Secretary of Labor, unless it has obtained appropriate liability insurance as described and permitted by Section 410(b) of the Employee Retirement Income Security Act of 1974.

(f) *Definitions.* For this section, defined benefit plan has the same meaning as in 29 U.S.C. 1002(35) and employee benefit plan has the same meaning as in 29 U.S.C. 1002(3).

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## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 741

#### Requirements for Insurance

**AGENCY:** National Credit Union Administration.

**ACTION:** Final rule.

**SUMMARY:** The National Credit Union Administration (NCUA) is adopting a final rule that establishes the requirements for federally insured credit unions to branch outside the United States. The final rule requires a credit union to develop a business plan and receive foreign government and NCUA approval before establishing a branch outside the United States.

**DATES:** This regulation is effective July 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Michael J. McKenna, Senior Staff Attorney, Division of Operations, Office of General Counsel, telephone: (703) 518–6540.

**SUPPLEMENTARY INFORMATION:** On September 7, 2000, the Board issued an advance notice of proposed rulemaking (ANPR). (65 FR 55464, September 14, 2000). The comment period for the ANPR ended on November 14, 2000. The key issues raised in the ANPR included: NCUA Board policy considerations, legal issues, supervision and examination considerations, options for insuring foreign branches of state-chartered credit unions, and options for restricting insurance coverage for state-chartered credit unions operating foreign branches.

On September 19, 2002, after carefully considering the comments and discussing the issue with state regulators, the NCUA Board issued a proposed rule that requires a credit union to obtain host country approval and develop a comprehensive business plan in order to obtain NCUA approval to establish a branch in a foreign country. (67 FR 60607, September 26, 2002). A federally insured, state-chartered credit union would also have to obtain state regulatory approval.

#### Comments

Twenty-one comments were received. Comments were received from eight federal credit unions, three state-chartered credit unions, four state leagues, three credit union trade associations, two attorneys, and one bank trade association. In general, most commenters support the proposal. Six commenters applauded the Board's decision to include federal credit unions in this proposal.

Three commenters opposed the proposal. Two of these commenters believe foreign branches inherently carry more risk than domestic branches. They believe that although the proposal minimizes risk, it is not eliminated. They suggest that foreign branches would be prime targets for money laundering. Finally, they believe that foreign branches will be costly to the National Credit Union Share Insurance Fund (NCUSIF) and, thus, federally insured credit unions.

#### Discussion

The NCUA Board proposed a three-step process to branch outside the United States. Most commenters supported the three-step process but suggested some changes to the proposal.

First, under the proposal, a credit union must receive written approval from the host country to establish the branch that explicitly recognizes NCUA's authority to examine and take any enforcement action with regard to that branch office, including conservatorship and liquidation actions. If a credit union is state-chartered, it must also obtain written approval from its state supervisory agency and submit the approval with the application.

Three commenters did not support this first requirement. One commenter believes it may be difficult for a credit union to obtain host country approval recognizing NCUA's authority. All three commenters believe this is an issue that should be worked on between NCUA and the various host countries.

One commenter requested that the rule language on host country approval should read “that explicitly recognizes