



7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 710

RIN: 3133-AE30

Voluntary Liquidation

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final Rule.

SUMMARY: The NCUA Board (Board) is issuing a final rule to amend its voluntary liquidation regulation to reduce administrative burdens on voluntarily liquidating federal credit unions (FCUs) and recognize technological advances by: permitting liquidating FCUs to publish required creditor notices in either electronic media or newspapers of general circulation; increasing the asset-size threshold for requiring multiple creditor notices; requiring that preliminary partial distributions to members not exceed the National Credit Union Share Insurance Fund (NCUSIF) insurance limit for any member share account; specifying when liquidating FCUs must determine member share balances

for the purposes of distributions; and permitting liquidating FCUs to distribute member share payouts either by wire or other electronic means or by mail or personal delivery.

DATES: This rule is effective [Insert date 30 days from publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Damon Frank and Ian Marena, Trial Attorneys, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428 or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION

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I. Background

What Changes Does This Final Rule Make?

This final rule amends NCUA's regulation on voluntary liquidations by FCUs. The changes modernize the rule and afford greater procedural flexibility to voluntarily liquidating FCUs. The final rule adopts the proposed changes in the proposed rule on

voluntary liquidations issued by the Board in February 2014.¹ Specifically, the final rule raises the asset-size thresholds that determine the frequency of required creditor notice publication. Further, it allows FCUs to use electronic media to meet the publication requirement while also enabling FCUs to issue share payouts to members by electronic payment methods. Also, the final rule clarifies the existing calculation of pro rata distributions to members. Finally, it requires that preliminary pro rata distributions to members, which voluntarily liquidating FCUs may issue pending the final payout, be limited to the NCUSIF insured amount applicable to any given account or accounts. This change does not limit the amount of the final distribution in any manner, provided the FCU does not enter involuntary liquidation because of insolvency.

II. Summary of Public Comments

The public comment period for the proposed rule ended on May 2, 2014. NCUA received five comment letters. Three of the comments were from credit union trade associations, one was sent on behalf of two credit union leagues, and one was from an FCU. All five letters expressly supported the proposed rule in general. Two comment letters from trade associations, however, suggested three identical changes to the proposed rule.

First, these two commenters requested that the final rule require NCUA staff to work with credit unions considering liquidation to find ways to continue operations or merge with another credit union to ensure ongoing member access to credit union services.

¹ 79 FR 11714 (March 3, 2014).

Second, both disagreed with the proposal to raise asset-size thresholds that determine whether and how many creditor notices must be published by a voluntarily liquidating FCU. These commenters stated that liquidation is a drastic step and that credit unions considering this option should be required to follow all notice and other requirements.

Third, both requested that the final rule adopt provisions similar to the FDIC's liquidation rules to provide members up to \$250,000 from their accounts and issue a claim against the estate of the closed credit union. The commenters stated that it would be inappropriate to treat credit union members less favorably than bank customers in a liquidation context.

The Board generally agrees with the rationale the commenters offered to support their proposed changes to the rule. As explained in detail below, however, the Board believes that the proposed rule and the way NCUA administers part 710 in practice already is consistent with the commenters' suggested amendments. Therefore, the Board does not believe it is necessary to amend the proposed rule to address the commenters' concerns.

III. Final Rule

A. Section 710.5(a)(1)

The final rule will allow voluntarily liquidating FCUs to publish any required creditor notice(s) in electronic media. FCUs may continue to publish in newspapers of general circulation, as provided by the current rule.

The final rule also increases the asset-size threshold for requiring multiple creditor notices from FCUs with assets equal to or greater than \$5 million to FCUs with assets equal to or greater than \$50 million, which is NCUA’s threshold for defining small credit unions. Two commenters did not support these adjustments because they believe that credit unions of all sizes should be required to follow all notice and other requirements to conduct a voluntary liquidation. The Board agrees that liquidation is, as the commenters stated, “an exceptional event” and one that an FCU should undertake only after careful consideration of any alternatives that would provide continuing credit union services to its members. NCUA’s Voluntary Liquidation Manual, which was issued in 1994 to provide detailed procedural guidance for this process, expresses the same position. The Board does not believe, however, that raising the asset-size thresholds from their 1993 levels will encourage more voluntary liquidations, disadvantage members, or diminish NCUA’s oversight of the process.

The proposed and final rules only affect the asset-size thresholds that govern how a voluntarily liquidating FCU must notify its potential creditors. Notably, the notice and procedural requirements of part 710, including the member vote and notification of the NCUA Regional Director, are unchanged.² Likewise, federally insured, state-chartered credit unions are still required to notify the Regional Director of a decision to liquidate, though the remainder of the requirements in part 710 apply solely to FCUs.³ The final rule does not change the requirement that a voluntarily liquidating FCU of any size must

² 12 CFR 710.2, 710.3.

³ 12 CFR 710.9.

notify its creditors of the liquidation.⁴ It simply updates the asset-size thresholds that determine whether and how frequently the notice must be published to reach a broader audience of potential creditors.

B. Section 710.5(a)(2)

The amendment to this provision increases the asset-size threshold applicable to publication requirements. FCUs with assets equal to or greater than \$1 million but less than \$50 million will be required to publish just one notice. As stated in the proposed rule, the final rule retains the tiered system for determining publication requirements, consistent with inflation since 1993, growth in credit union assets, and NCUA's definition of small credit unions. The Board adopts these amendments without change for the reasons discussed above.

C. Section 710.5(a)(3)

This amendment also increases asset-size thresholds applicable to the publication requirement. FCUs with assets under \$1 million are exempted from the publication requirement but still must notify creditors, as required by the existing rule. The Board adopts this change from the proposed rule for the reasons discussed above.

D. Section 710.6(a)

The final rule also makes a minor change to the optional, partial pro rata distribution process. The current rule permits voluntarily liquidating FCUs to make a partial pro rata distribution of assets to members before the liquidation is completed. The Regional

⁴ 12 CFR 710.5(a).

Director must approve the distribution.⁵ The proposed rule limited these preliminary distributions to the insured amount available in any account. The purpose of this limitation is to protect the NCUSIF in case the liquidating FCU becomes insolvent during the process. In that event, NCUA would be required to place the FCU into involuntary liquidation and apply the liquidation payout priorities and share insurance requirements in parts 709 and 745. Any payments of uninsured shares before the completion of the voluntary liquidation might complicate or disrupt the priorities that apply in an involuntary liquidation, which could result in additional cost to the NCUSIF in the unusual case in which the FCU becomes insolvent.

The final rule also adds a minor clarification to the proposed rule. The proposed rule limited preliminary share distributions to the insured amount available in any account. The final rule clarifies that multiple accounts held by the same member or members may sometimes be aggregated to determine share insurance per part 745 of NCUA's regulations. This clarification does not change the current rule for calculating share insurance and is intended to reflect more accurately how NCUA currently applies share insurance to multiple accounts under part 745.

Two commenters disagreed with the proposed change to this provision and requested that NCUA implement a process comparable to the FDIC's liquidation process. According to the commenters, in a liquidation, the FDIC pays insured amounts up to \$250,000 and then provides claims against the estate of the closed bank to the depositors for any

⁵ 12 CFR 710.6(a).

amounts above the insured limit. The commenters stated that credit union members should not be treated less favorably than bank customers.

The Board agrees that credit union members should not be disadvantaged and believes that this amendment to the rule does not harm their interests in any way. If the voluntarily liquidating FCU remains solvent throughout the process, its members receive their full account balances, along with any available liquidating dividend. If the FCU becomes insolvent, NCUA would place it into involuntary liquidation under Section 207(a) of the Federal Credit Union Act and apply the payout priorities and procedures in part 709 of NCUA's regulations. During this process, members would receive their insured balances and a certificate of claim in liquidation for any uninsured balances to allow them to share in the proceeds of the involuntary liquidation.⁶ This treatment of uninsured balances is the same as the FDIC liquidation process that the commenters describe. Whether the FCU remains solvent during a voluntary liquidation or not, its members are not disadvantaged when compared to bank customers.

E. Section 710.6(b)

The final rule provides greater specificity for the calculation of pro rata distributions to members. For purposes of this calculation, a voluntarily liquidating FCU will use the date that members approve liquidation to compute share balances, subject to adjustment for any share drafts that clear after the liquidation date.

⁶ 12 CFR 745.201(b).

F. Section 710.6(c)

The final rule also allows voluntarily liquidating FCUs to distribute member payouts by wire or other means, if approved by the member, in addition to the existing option of issuing a check.

IV. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.⁷ For purposes of this analysis, NCUA considers small credit unions to be those having under \$50 million in assets.⁸ This final rule has no significant economic impact on FCUs as going concerns because it solely addresses procedures for voluntary liquidation. Also, the final rule increases certain dollar thresholds and affords greater flexibility to all FCUs engaging in voluntary liquidation. Additionally, the number of FCUs engaging in voluntary liquidations is very low. Accordingly, NCUA has determined that this rule will not have a significant economic impact on a substantial number of small credit unions.

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

⁷ 5 U.S.C. 603(a).

⁸ Interpretive Ruling and Policy Statement 03-2, 68 FR 31949 (May 29, 2003), as amended by Interpretive Ruling and Policy Statement 13-1, 78 FR 4032 (Jan. 18, 2013).

burden.⁹ For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. This final rule does not impose or expand upon any existing reporting or recordkeeping requirements. This final rule will not create new paperwork burdens or modify any existing paperwork burdens.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final rule applies almost exclusively to FCUs and 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. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

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, 1999.¹⁰

⁹ 44 U.S.C. 3507(d).

¹⁰ Public Law 105-277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 710

Credit union, Reporting and recordkeeping requirements

By the National Credit Union Administration Board on June 19, 2014.

Gerard Poliquin

Secretary of the Board

For the reasons discussed above, NCUA amends 12 CFR Part 710 as follows:

PART 710 – VOLUNTARY LIQUIDATION

1. The authority citation for part 710 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1786, and 1787.

2. In § 710.5, revise paragraphs (a)(1) and (2) and in paragraph (a)(3) remove “\$500,000” and add in its place “\$1 million”.

The revisions read as follows:

§ 710.5 Notice of liquidation to creditors.

(a) * * *

(1) Federal credit unions with assets equal to or greater than \$50 million as of the month end prior to the liquidation date shall publish the notice once a week in each of three successive weeks, in a newspaper of general circulation in each county in which the Federal credit union maintains an office or branch for the transaction of business on the liquidation date, or through any alternative publication through an electronic medium that is reasonably calculated to reach the general public in the relevant area or areas. The first notice shall be published within seven days of the liquidation date.

(2) Federal credit unions with assets equal to or greater than \$1 million but less than \$50 million as of the month end prior to the liquidation date shall publish the notice described in paragraph (a)(1) of this section at least once. The notice shall be published within seven days of the liquidation date.

* * * * *

3. In §710.6, revise paragraphs (a), (b), and (c) to read as follows:

§ 710.6 Distribution of assets.

(a) With the approval of the Regional Director, a partial pro rata distribution of the Federal credit union's assets may be made to its members from cash funds available on authorization by the board of directors or liquidating agent. Payment of a partial distribution may exclude member accounts of less than \$25.00 and must not exceed the insured amount applicable to any account or accounts, as determined under part 745 of this chapter.

(b) After all assets of the Federal credit union have been converted to cash or found to be worthless and all loans and debts owing to it have been collected or found to be uncollectible and all obligations of the Federal credit union have been paid, with the exception of shares due its members, the books shall be closed and the pro rata distribution to the members shall be computed. The computation shall be based on the total amount in each share account as of the liquidation date or the date on which all share drafts have cleared, whichever is later.

(c) Payments must be made to members promptly after the pro rata distribution has been computed. The Federal credit union may mail a check to a member at his or her last known address, deliver the check personally to the member, or make the payment by wire or any other electronic means approved by a member.

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