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**7535-01-U**

## **NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 705**

**RIN 3133-AE58**

### **Community Development Revolving Loan Fund**

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

**ACTION:** Final rule.

**SUMMARY:** The NCUA Board (Board) is finalizing a rule to make several technical amendments to NCUA's rule governing the Community Development Revolving Loan Fund (CDRLF). The amendments will make the rule more succinct and improve its transparency, organization, and ease of use by credit unions.

**DATES:** This rule is effective [INSERT DATE THAT IS 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Geetha Valiyil, Manager, Grants and Loans, Office of Small Credit Union Initiatives, or Justin Anderson, Senior Staff Attorney, Office of General Counsel, at 1775 Duke Street, Alexandria, VA 22314 or telephone (703) 518-6645 (Ms. Valiyil) or (703) 518-6540 (Mr. Anderson).

## **SUPPLEMENTARY INFORMATION:**

### **A. Background**

In June 2016, the Board issued a proposed rule to amend NCUA's CDRLF rule.<sup>1</sup> The proposed amendments were largely technical in nature or clarified NCUA's practices with respect to disbursing money from the CDRLF.

### **B. Summary of Comments**

NCUA received three comments on the proposed rule, all of which were generally supportive of the rule. One commenter, however, did request additional changes and clarifications. These comments are addressed in the section-by-section analysis below.

### **C. Section-by-Section Analysis**

As the Board did not receive any comments on the amendments to §§705.1, 705.6, and 705.9, which relate to the authority and purpose of the part, terms for grants, and reporting, the Board is finalizing these amendments as proposed.

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<sup>1</sup> 81 FR 40197 (June 21, 2016).

*§705.2 Definitions.* This section provides definitions used throughout the rule. The proposed rule removed unnecessary and duplicative definitions. One commenter requested that the Board reconsider the removal of the definition of “Fund.” The commenter stated that this term is specifically relevant to the CDRLF rule and should remain. As noted in the preamble, this term is already defined in §705.1. The Board continues to believe a second definition of “Fund” is unnecessary and is, therefore, finalizing the amendments to this section as proposed.

*§705.5. Terms and Conditions.* This section outlines the terms and conditions for CDRLF loans. Currently, this section has an aggregate loan limit of \$300,000, which prevents NCUA from making loans that exceed this amount. As noted in the proposal, the Board sought to remove this limit to allow NCUA to grant loans in excess of \$300,000 and to provide more flexibility for the agency to meet changing loan demands. One commenter believed that the proposed removal of the aggregate loan limit from the rule could lead to NCUA instituting lower aggregate limits, which could harm credit unions. This commenter suggested including language in the rule that explicitly instructs that there is no aggregate limit for loans or technical assistance grants.

As noted in the preamble to the proposed rule, the Board proposed eliminating the aggregate loan limit to help credit unions. As the current aggregate loan limit is an upper limit, NCUA is currently free to set a lower amount for CDRLF loans but cannot offer a higher amount. The proposed removal of this limit will allow NCUA to offer higher loan amounts. As the proposed removal of the limit will help, rather than harm credit unions, the Board is adopting this change as proposed. Further, as there is currently no aggregate limit for technical assistance grants and

the grant amounts vary each year, the Board does not believe it is necessary to add the additional language suggested by this commenter.

This commenter also requested more substantive terms and conditions for technical assistance grants. While the commenter did not specify what additional terms and conditions the Board should add, the commenter did suggest that the terms and conditions for grants are “scarce in comparison” to those for loans. The Board notes that as grants are not required to be repaid, unlike loans made under the CDRLF program, there is no need for more comprehensive terms and conditions. Further, the Board’s goal in proposing amendments to the CDRLF rule was to make the rule more user friendly and simpler; adding additional terms and conditions where they are not needed would frustrate that purpose. Finally, as noted in the proposed rule, any additional terms and conditions for loans or grants will be specified in the Notice of Funding Opportunity and not in the regulatory text.

*Current §705.6. Application and award processes.* This section specifies the procedures a credit union must follow to apply for a loan or grant from the CDRLF. The Board sought to make this section clearer and more accurate by proposing amendments that made this section easier to follow and more reflective of NCUA’s current practices. One commenter requested clarification on whether a credit union is required to obtain approval from the applicable regional director before submitting an application. NCUA has never required such prior approval in the past, and the Board clarifies it is not doing so now.

*§705.10. Appeals.* The Board proposed to add this new section to contain all applicable appeals language in one section, which would make the rule more user friendly. One commenter requested clarification on the appeal rights in proposed §705.10(a). Specifically, this commenter believes that this section could be interpreted as only applying to loans and not to grants. In relevant portion, proposed §705.10(a) reads as follows: “Appeals of Non-Qualification. A Qualifying Credit Union whose application for a loan or technical assistance grant has been denied, under §705.7(f) of this part, for failure of a qualification may appeal that decision to the NCUA Board in accordance with the following. . .”

The Board believes this section clearly applies to both loans and technical assistance grants. Conversely subsection (b) of this proposed section states that it only applies to technical assistance grants. The Board is adopting the amendments to this section as proposed.

## **REGULATORY PROCEDURES**

### Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities. NCUA considers credit unions having less than \$100 million in assets to be small for purposes of RFA. The revisions to part 705 are designed to update and streamline the rule, thereby reducing the burden for credit unions that are seeking financial awards, whether in the

form of a technical assistance grant or a loan. NCUA has determined and certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that an RFA analysis is not required.

#### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden or increases an existing burden. For purposes of the PRA, a paperwork burden may take the form of a reporting or recordkeeping requirement, both referred to as information collections. The changes in this rule are technical in nature and will not create new paperwork burdens or modify any existing paperwork burdens.

#### 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 rulemaking 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 rule does not constitute a policy that has federalism implications for purposes of the executive order.

#### The Treasury and General Government Appropriations Act, 1999 - - 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, Pub. L. 105-277, 112 Stat. 2681 (1998).

### **List of Subjects in 12 CFR Part 705**

Community programs, Credit unions, Grants, Loans, Low income, Revolving fund .

By the National Credit Union Administration Board on November 17, 2016. .

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Gerard Poliquin  
Secretary of the Board

For the reasons stated above, NCUA amends 12 CFR part 705 as follows:

### **PART 705 COMMUNITY DEVELOPMENT REVOLVING LOAN FUND FOR CREDIT UNIONS**

1. The authority citation for part 705 continues to read as follows:

**Authority:** 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786.

2. Amend § 705.1 by revising paragraphs (c) through (e) to read as follows:

**§705.1 Authority, purpose, and scope.**

\* \* \* \* \*

(c) NCUA's policy is to revolve the loan funds to credit unions as often as practical in order to achieve maximum economic impact on as many credit unions as possible.

(d) The financial awards provided to credit unions through the Fund will better enable them to support the communities in which they operate; provide basic financial services to low-income residents of these communities, and result in more opportunities for the residents of those communities to improve their financial circumstances.

(e) The Fund is intended to support the efforts of credit unions through loans and technical assistance grants needed for:

(1) Providing basic financial and related services to residents in their communities;

(2) Enhancing their capacity to better serve their members and the communities in which they operate; and

(3) Responding to emergencies.



3. Revise §705.2 to read as follows:

**§705.2 Definitions.**

For purposes of this part, the following terms shall have the meanings assigned to them in this section.

Application means a form supplied by the NCUA by which a Qualifying Credit Union may apply for a loan or a technical assistance grant from the Fund.

Loan is an award in the form of an extension of credit from the Fund to a Participating Credit Union that must be repaid, with interest.

Low-income Members are those members defined in §701.34 of this chapter.

Notice of Funding Opportunity means the Notice NCUA publishes describing one or more loan or technical assistance grant programs or initiatives currently being supported by the Fund and inviting Qualifying Credit Unions to submit applications to participate in the program(s) or initiatives(s).

Participating Credit Union refers to a Qualifying Credit Union that has submitted an application for a loan or a technical assistance grant from the Fund which has been approved by NCUA. A

Participating Credit Union shall not be deemed to be an agency, department, or instrumentality of the United States because of its receipt of a financial award from the Fund.

Program means the Community Development Revolving Loan Fund Program under which NCUA makes loans and technical assistance grants available to credit unions.

Qualifying Credit Union means a credit union that may be, or has agreed to be, examined by NCUA, with a current low-income designation pursuant to §701.34(a)(1) or §741.204 of this chapter or, in the case of a non-federally insured, state-chartered credit union, a low-income designation from a state regulator, made under appropriate state standards with the concurrence of NCUA. Services to low-income members must include, at a minimum, offering share accounts and loans.

Technical Assistance Grant means an award of money from the Fund to a Participating Credit Union that does not have to be repaid.

4. Amend §705.5 as follows:

a. Revise the section heading.

b. Revise paragraph (b).

- c. Amend paragraph (h) by adding the words “security agreements (if any),” between the words “repayment obligations,” and “and covenants,”.

The revisions read as follows:

**§705.5 Terms and conditions for loans.**

\* \* \* \* \*

- (b) *Funding Limits*. NCUA will publish any applicable loan funding limits in the applicable Notice of Funding Opportunity.

\* \* \* \* \*

**§ 705.8 [Removed]**

5. Remove §705.8.

**§§ 705.6 and 705.7 [Redesignated as §§ 705.7 and 705.8]**

6. Redesignate §§ 705.6 and 705.7 as §§ 705.7 and 705.8, respectively;

7. Add new §705.6 to read as follows:

**§ 705.6 Terms and conditions for technical assistance grants.**

(a) Participating Credit Unions must comply with the terms and conditions for technical assistance grants specified for each funding opportunity offered under a Notice of Funding Opportunity.

(b) NCUA will establish applicable funding limits for technical assistance grants in the Notice of Funding Opportunity.

8. Amend redesignated §705.7 as follows:

a. Revise paragraph (a).

b. Revise paragraph (c)(4).

c. Revise paragraphs (f) and (g).

The revisions read as follows:

**§705.7 Application and award processes.**

(a) Notice of Funding Opportunity. NCUA will publish a Notice of Funding Opportunity in the Federal Register and on its website. The Notice of Funding Opportunity will describe the loan and technical assistance grant programs for the period in which funds are available. It also will

announce special initiatives, the amount of funds available, funding priorities, permissible uses of funds, funding limits, deadlines, and other pertinent details. The Notice of Funding Opportunity will also advise potential applicants on how to obtain an Application and related materials. NCUA may supplement the information contained in the Notice of Funding Opportunity through such other media as it determines appropriate, including Letters to Credit Unions, press releases, direct notices to Qualifying Credit Unions, and announcements on its website.

\* \* \* \* \*

(c) \* \* \*

(4) Examination Information and Applicable Concurrence. In evaluating a Qualifying Credit Union, NCUA will consider all information provided by NCUA staff or state supervisory authority staff that performed the Qualifying Credit Union's most recent examination. In addition:

(i) NCUA will only provide a loan to a qualifying federal credit union with the concurrence of that credit union's supervising Regional Director; and

(ii) NCUA will only provide a loan to a qualifying state-chartered credit union with the written concurrence of the applicable Regional Director and the credit union's state supervisory authority. A qualifying state-chartered credit union should notify its state supervisory authority that it is applying for a loan from the Fund before submitting its

application to NCUA. However, a qualifying state-chartered credit union is not required to obtain concurrence before applying for a loan. NCUA will obtain the concurrence directly from the state supervisory authority rather than through the qualifying state-chartered credit union. Additionally, before NCUA will provide a loan to a qualifying state-chartered credit union the credit union must make copies of its state examination reports available to NCUA and agree to examination by NCUA.

\* \* \* \* \*

(f) Notice of Award. NCUA will determine whether an application meets NCUA's standards established by this part and the related Notice of Funding Opportunity. NCUA will provide written notice to a Qualifying Credit Union as to whether or not it has qualified for a loan or technical assistance grant under this part. A Qualifying Credit Union whose application has been denied for failure of a qualification may appeal that decision in accordance with §705.10 of this part.

(g) Disbursement—(1) Loans. Before NCUA will disburse a loan, the Participating Credit Union must sign the loan agreement, promissory note, and any other loan related documents. NCUA may, in its discretion, choose not to disburse the entire amount of the loan at once.

(2) Technical Assistance Grants. NCUA will disburse technical assistance grants in such amounts, and in accordance with such terms and conditions, as NCUA may establish. In general,

technical assistance grants are provided on a reimbursement basis, to cover expenditures approved in advance by NCUA and supported by receipts evidencing payment by the Participating Credit Union.

9. Revise §705.9(b) to read as follows:

**§705.9 Reporting and monitoring.**

\* \* \* \* \*

(b) Reporting—(1) Reporting to NCUA. A Participating Credit Union must complete and submit to NCUA all required reports, at such times and in such formats as NCUA will direct. Such reports must describe how the Participating Credit Union has used the loan or technical assistance grant proceeds and the results it has obtained, in relation to the programs, policies, or initiatives identified by the Participating Credit Union in its application. NCUA may request additional information as it determines appropriate.

(2) Reporting to Members—(i) Loans. A Participating Credit Union that receives a loan under this part must report on the progress of providing needed community services to the Participating Credit Union's members once a year, either at the annual meeting or in a written report sent to all members. The Participating Credit Union must also submit to NCUA the written report or a summary of the report provided to members.

(ii) Technical Assistance Grants. A Participating Credit Union that receives a technical assistance grant under this part should report on the progress of providing needed community services to the Participating Credit Union's members once a year, either at the annual meeting or in a written report sent to all members.

\* \* \* \* \*

10. Revise §705.10 to read as follows:

**§705.10 Appeals.**

(a) Appeals of non-qualification. A Qualifying Credit Union whose application for a loan or technical assistance grant has been denied, under §705.7(f), for failure of a qualification may appeal that decision to the NCUA Board in accordance with the following:

(1) Within thirty days of its receipt of a notice of non-qualification, a credit union may appeal the decision to the NCUA Board. The scope of the NCUA Board's review is limited to the threshold question of qualification and not the issue of whether, among qualified applicants, a particular loan or technical assistance grant is funded.

(2) The foregoing procedure shall apply only with respect to Applications received by NCUA during an open period in which funds are available and NCUA has called for Applications. Any Application submitted by an applicant during a period in which NCUA has



not called for Applications will be rejected, except for those Applications submitted under §705.8. Any such rejection shall not be subject to appeal or review by the NCUA Board.

(b) Appeals of technical assistance grant reimbursement denials. Pursuant to NCUA Interpretative Ruling and Policy Statement 11-1, any Participating Credit Union may appeal a denial of a technical assistance grant reimbursement to NCUA's Supervisory Review Committee. All appeals of technical assistance grant reimbursements must be submitted to the Supervisory Review Committee within 30 days from the date of the denial. The decisions of the Supervisory Review Committee are final and may not be appealed to the NCUA Board.

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