

B. Summary of Comments

The NCUA Board received three comments on the proposal: one from a credit union trade group and two from state leagues. All three commenters supported the removal of the regulation.

C. Regulatory Procedures

1. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small credit unions, meaning those under \$1 million in assets. The NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA Board has determined that a Regulatory Flexibility analysis is not required.

2. Paperwork Reduction Act

This final rule to remove § 701.30 does not involve a collection of information under the Paperwork Reduction Act. Accordingly, NCUA has determined that a Paperwork Reduction analysis is not required.

3. Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final rule is to remove a current regulation that applies to federal credit unions, not federally insured state chartered credit unions. Therefore, NCUA has determined that the final rule does not constitute a "significant regulatory action" for purposes of the Executive Order.

4. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act, 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and determined that, for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, this is not a major rule.

List of Subjects in 12 CFR Part 701

Credit unions, Safe deposit box service.

By the National Credit Union Administration Board on May 19, 1999.

Becky Baker,
Secretary of the Board.

Accordingly, the National Credit Union Administration amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION 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, and 1798. Section 701.6 is also authorized by 31 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.

§ 701.30 [Removed]

2. Part 701 is amended to remove and reserve § 701.30.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 713, and 741

Organization and Operations of Federal Credit Unions; Fidelity Bond and Insurance Coverage for Federal Credit Unions; Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA is issuing this rule to update, clarify, revise and redesignate its regulation that addresses the requirements for fidelity bond coverage for losses caused by credit union employees and officials and for general insurance coverage for losses caused by persons outside of the credit union, e.g., losses due to theft, holdup or vandalism. The final rule recasts the rule in plain English format and adds several previously approved bond forms to the regulation.

DATES: This rule is effective July 26, 1999.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

FOR FURTHER INFORMATION CONTACT: Allan Meltzer, Associate General Counsel, 1775 Duke Street, Alexandria, VA 22314-3428. Telephone Number (703) 518-6540.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Credit Union Act sets forth statutory requirements for the bonding of credit union employees and appointed and elected officials. 12 U.S.C. 1761a, 1761b(2) and 1766(h). The NCUA Board is directed to promulgate regulations setting forth both the amount and character of bond requirements for employees and officials. The NCUA Board is also granted the following powers concerning bonding:

To approve bond forms;
To set minimum requirements for bond coverage;

To require such other fidelity coverage as the Board may determine to be reasonably appropriate;

To approve a blanket bond in lieu of individual bonds; and

To approve bond coverage in excess of minimum fidelity coverage.

In addition, NCUA's general rulemaking authority provides a statutory basis for both the bonding requirements of § 701.20 and the insurance coverage requirements related to losses caused by persons outside the credit union. 12 U.S.C. 1766(a), 1789(a)(11).

NCUA has a policy of periodically reviewing its regulations to "update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions." IRPS 87-2, Developing and Reviewing Government Regulations. As part of its regulatory review program, NCUA reviewed § 701.20 to determine whether the language of the regulation was clear and effective. As a result of that review on December 17, 1998, the NCUA Board proposed changes to this regulation (64 FR 58, January 4, 1999) to increase regulatory effectiveness by making it easier for credit unions to understand the requirements regarding fidelity bonds and other insurance. The proposed rule also added a number of additional bond forms which have been approved by the NCUA for use by federal credit unions.

In addition, the proposed rule provided for an aggregate limit of liability no less than twice the single loss limit of liability stated in the fidelity bond. Most bond forms currently in use provide for such an aggregate liability limit.

B. Comments

Five comment letters were received. Of these, three were received from state credit union leagues, one from a national credit union trade association, and one from an insurance company. All five concurred with the final rule.

Two commenters noted that the proposal uses the terms surety and fidelity interchangeably, and suggest that for the sake of clarity the term fidelity be used throughout. The term surety has been eliminated from the final rule and the term fidelity used throughout.

One commenter suggested that NCUA clarify that the provision requiring that an aggregate limit of liability be twice the single loss limit of liability does not apply to optional coverages, but only to required fidelity coverage. Section 713.5(d) of the final rule has been modified to adopt this suggested change. Section 713.5(e) has also been clarified to provide that a credit union need only obtain prior written approval from the NCUA Board for a reduction in required fidelity bond coverage. A credit union board of directors may modify optional insurance coverage as business needs dictate.

One commenter suggested a clarification related to Section 713.2, which sets forth the responsibilities of a board of directors to annually review a federal credit union's insurance coverage to ensure its adequacy. This commenter suggested that either the regulation or preamble state that the board of directors may discharge its duties in this respect by requiring that management provide it with an annual report on the credit union's insurance coverage. The manner in which a board of directors chooses to discharge its responsibilities under Section 713.2 will differ from credit union to credit union. However it chooses to do so, the ultimate responsibility remains with the board of directors. Accordingly, the final rule remains as proposed.

With respect to the minimum bond limits and maximum deductibles set forth in the proposal, three commenters concurred with the proposed amounts. One commenter suggested that the maximum deductible for the largest credit unions be increased from \$200,000 to \$500,000. NCUA has continued these amounts as proposed.

One commenter noted that while the proposed rule was drafted in terms of requirements for individual credit unions, and while most fidelity bond policies are in fact purchased separately by credit unions, there have been instances where credit unions have jointly purchased fidelity bond policies. This commenter also noted that the majority of policies written today carry an aggregate limit of two times the single loss limit of liability, a limitation required under the final rule. The commenter was concerned that in these cases a loss suffered by one or two of the joint policy holders could reduce the

amount of coverage available for the other joint policy holders below the required minimum amount, i.e. two losses equal to the single loss limit of liability would exhaust the coverage available for all credit unions to zero even though some of these credit unions would not have suffered a loss.

This commenter also noted a concern with the joint purchase of fidelity bond policies even when the policy purchased does not have an aggregate limit of liability. While it is true that a loss suffered by one credit union would not reduce the amount of coverage available to the other credit unions purchasing the policy, this commenter suggested that, when several credit unions purchase a policy in a group, they may not give adequate attention to providing for the specific risks faced by individual credit unions. Compromises might be made in coverage amounts that would not be made if the policy were purchased individually.

In addition, this commenter argued that the joint policy holders might not adjust coverages in a timely manner because of the difficulty of doing so in a group purchasing scenario. The Board notes that § 713.5 of the regulation requires that a credit union increase its bond coverage within thirty days of certain events having occurred. The Board also reserves the right, pursuant to § 713.7, to require a credit union to purchase additional coverage within thirty days if it deems current coverage to be inadequate. Both sections would be more difficult to implement for a credit union holding a jointly purchased fidelity bond policy.

In light of these concerns § 713.3 of the final rule has been clarified to provide that a fidelity bond must be individually purchased by each federal credit union.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under \$1 million in assets). The NCUA Board certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, a regulatory flexibility analysis was not required.

Paperwork Reduction Act

The final rule has no information collection requirements; therefore, no Paperwork Reduction Act analysis was required.

Executive Order 12612

The NCUA Board has determined that the final rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act, 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and has determined that for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 it is not a major rule.

List of Subjects

12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 713

Credit unions, Fidelity bonds.

12 CFR Part 741

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board this 19th day of May, 1999.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, 12 CFR chapter VII is amended as follows:

PART 701—ORGANIZATION AND OPERATION 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.

§ 701.20 [Removed and Reserved]

2. Part 701 is amended by removing and reserving 701.20.

3. Part 713 is added to read as follows:

PART 713—FIDELITY BOND AND INSURANCE COVERAGE FOR FEDERAL CREDIT UNIONS

Sec.

713.1 What is the scope of this section?

713.2 What are the responsibilities of a credit union's board of directors under this section?

713.3 What bond coverage must a credit union have?

713.4 What bond forms may be used?

713.5 What is the required minimum dollar amount of coverage?

713.6 What is the permissible deductible?

713.7 May the NCUA Board require a credit union to secure additional insurance coverage?

Authority: 12 U.S.C. 1761a, 1761b, 1766(a), 1766(h), 1789(a)(11).

§ 713.1 What is the scope of this section?

This section provides the requirements for fidelity bonds for Federal credit union employees and officials and for other insurance coverage for losses such as theft, holdup, vandalism, etc., caused by persons outside the credit union.

§ 713.2 What are the responsibilities of a credit union's board of directors under this section?

The board of directors of each Federal credit union must at least annually review its fidelity and other insurance coverage to ensure that it is adequate in relation to the potentials risks facing the credit union and the minimum requirements set by the Board.

§ 713.3 What bond coverage must a credit union have?

At a minimum, your bond coverage must:

(a) Be purchased in an individual policy from a company holding a certificate of authority from the Secretary of the Treasury; and

(b) Include fidelity bonds that cover fraud and dishonesty by all employees, directors, officers, supervisory committee members, and credit committee members.

§ 713.4 What bond forms may be used?

(a) The following basic bonds may be used without prior NCUA Board approval:

Credit union form No.	Carrier
Credit Union Blanket Bond Standard Form 23 of the Surety Association of America (revised May 1950).	Various.
Extended Form 23	USFG.
100	CUMIS (only approved for corporate credit union use).
200	CUMIS.
300	CUMIS.
400	CUMIS.
AIG 23	National Union Fire Insurance Co. of Pitts., PA.
Reliance Preferred Form 23	Reliance Insurance Company.
Form 31	ITT Hartford.
Form 24 with Credit Union Endorsement	Continental (only approved for corporate credit union use).
Form 40325	St. Paul Fire and Marine.
Form F2350	Fidelity & Deposit Co. Of Maryland.
Form 9993 (6/97)	Progressive Casualty Insurance Co.
Credit Union Blanket Bond (1/96)	Cooperativas de Seguros Multiples de Puerto Rico.

(b) To use any of the following, you need prior written approval from the Board:

(1) Any other basic bond form; or

(2) Any rider or endorsement that limits coverage of approved basic bond forms.

§ 713.5 What is the required minimum dollar amount of coverage?

(a) The minimum required amount of fidelity bond coverage for any single loss is computed based on a Federal credit union's total assets.

Assets	Minimum bond
\$0 to \$10,000	Coverage equal to the credit union's assets.
\$10,001 to \$1,000,000	\$10,000 for each \$100,000 or fraction thereof.
\$1,000,001 to \$50,000,000	\$100,000 plus \$50,000 for each million or fraction over \$1,000,000.
\$50,000,001 to \$295,000,000	\$2,550,000 plus \$10,000 for each million or fraction thereof over \$50,000,000.
Over \$295,000,000	\$5,000,000.

(b) This is the minimum coverage required, but a Federal credit union's board of directors should purchase additional coverage when circumstances, such as cash on hand or cash in transit, warrant.

(c) While the above is the required minimum amount of bond coverage, credit unions should maintain increased coverage equal to the greater of either of the following amounts within thirty days of discovery of the need for such increase:

(1) The amount of the daily cash fund, i.e. daily cash plus anticipated daily money receipts on the credit union's premises, or

(2) The total amount of the credit union's money in transit in any one shipment.

(3) Increased coverage is not required pursuant to paragraph (c) of this section, however, when the credit union temporarily increased its cash fund because of unusual events which cannot reasonably be expected to recur.

(d) Any aggregate limit of liability provided for in a fidelity bond policy must be at least twice the single loss limit of liability. This requirement does not apply to optional insurance coverage.

(e) Any proposal to reduce your required bond coverage must be approved in writing by the NCUA Board at least twenty days in advance of the proposed effective date of the reduction.

§ 713.6 What is the permissible deductible?

on a Federal credit union's asset size, as follows:

(a)(1) The maximum amount of allowable deductible is computed based

Assets	Maximum deductible
\$0–\$100,000	No deductibles allowed.
\$100,001–\$250,000	\$1,000.
\$250,001–\$1,000,000	\$2,000.
Over \$1,000,001	\$2,000 plus 1/1000 of total assets up to a maximum deductible of \$200,000.

(2) The deductibles may apply to one or more insurance clauses in a policy. Any deductibles in excess of the above amounts must receive the prior written permission of the NCUA Board.

(b) A deductible may not exceed 10 percent of a credit union's Regular Reserve unless a separate Contingency Reserve is set up for the excess. In computing the maximum deductible, valuation accounts such as the allowance for loan losses cannot be considered.

§ 713.7 May the NCUA Board require a credit union to secure additional insurance coverage?

The NCUA Board may require additional coverage when the Board determines that a credit union's current coverage is inadequate. The credit union must purchase this additional coverage within 30 days.

PART 741—REQUIREMENTS FOR INSURANCE

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

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

5. Section 741.201(a) and (b) are amended by removing “§ 701.20” and adding “Part 713” in its place.

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NATIONAL CREDIT UNION ADMINISTRATION**12 CFR Parts 701, 722, 723 and 741
RIN 3133–AB91****Organization and Operation of Federal Credit Unions; Appraisals; Member Business Loans; and Requirements for Insurance**

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA is updating, clarifying and streamlining its existing

rules concerning member business loans and appraisals for federally insured credit unions, as well as implementing recent statutory limitations regarding member business loans.

The intended effect of this rule is to reduce regulatory burden, maintain safety and soundness, implement statutory limits and provide guidance on the statutory exception for qualifying credit unions from the statutory aggregate limit on a credit union's outstanding member business loans.

DATES: This rule is effective June 28, 1999.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Senior Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540; or David M. Marquis, Director, Office of Examination and Insurance, at the above address or telephone: (703) 518–6360.

SUPPLEMENTARY INFORMATION:**A. Background**

On July 23, 1997, the Board issued proposed amendments to the regulation governing member business loans (Previous Section 701.21(h) and Proposed Part 723 of NCUA's Regulations) and appraisals (Part 722 of NCUA's Regulations) with a sixty-day comment period. 62 FR 41313 (August 1, 1997). The Credit Union Membership Access Act (the Act) was enacted into law on August 7, 1998. Public Law 105–219, 112 Stat. 913 (1998). Among other things, the Act imposed a new aggregate limit on a federally-insured credit union's outstanding member business loans. However, the Act also provided for three circumstances where a credit union could qualify for an exception from the aggregate limit. On September 23, 1998, the NCUA Board issued an interim final member business loan rule with a sixty-day comment period. 63 FR 51793 (September 29, 1998). The comment period was extended November 19, 1998, for an additional

sixty days. 63 FR 65532 (November 27, 1998).

B. Comments

Eighty-seven comments were received. Comments were received from twenty-five federal credit unions, ten state-chartered credit unions, eleven state leagues, three national credit union trade associations, one association of state supervisors, one appraisal trade association, fifteen banks, eighteen bank trade associations, two law firms, and one government agency. Except for the bank and bank trade associations, the commenters were generally supportive of the interim final rule, although most commenters suggested ways they would modify the final rule. The bank and bank trade association comments are summarized in a separate section.

Section-by-Section Analysis and NCUA Board Decisions**Section 723.1(a)—What is a Member Business Loan?**

This section provides a definition of a member business loan. The Act sets forth the definition of a member business loan, so NCUA can no longer define the term.

Therefore, a member business loan means any loan, line of credit, or letter of credit, the proceeds of which will be used for a commercial, corporate or other business investment property or venture, or agricultural purposes. Section 107A(c)(1)(a) of the Act. The final rule clarifies that unfunded commitments are included in determining whether a loan is a member business loan.

Three commenters requested that loans made to churches or other religious organizations be exempt from the definition of a member business loan. These commenters stated that while churches may be organized as corporations, any loan to such a corporation would not be for a “commercial” purpose. These commenters stated that the term “business” implies for-profit activity. The NCUA Board disagrees with these commenters. In general, a loan to a non-