7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 710

RIN: 3133-AE30

Voluntary Liquidation

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The NCUA Board (Board) proposes to amend its voluntary liquidation regulation to reduce administrative burdens on voluntarily liquidating federal credit unions (FCUs) and recognize technological advances by: (1) permitting liquidating FCUs to publish required creditor notices in either electronic media or newspapers of general circulation; (2) increasing the asset-size threshold for requiring multiple creditor notices; (3) requiring that preliminary partial distributions to members not exceed the insured limit for any member share account; (4) specifying when liquidating FCUs must determine member share balances for the purposes of distributions; and (5) permitting

liquidating FCUs to distribute member share payouts either by wire or other electronic means or by mail or personal delivery.

DATES: Comments must be received on or before [Insert date 60 days from date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods **(Please send comments by one method only)**:

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include "[Your name]—Comments on Proposed Rule 710" in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

PUBLIC INSPECTION: You may view all public comments on NCUA's website at http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to OGCMail@ncua.gov.

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

SUPPLEMENTARY INFORMATION

I. Background

A. What Changes Does This Proposed Rule Make?

NCUA has not made substantive changes to the rule governing voluntary liquidations by FCUs since 1993. This proposed amendment to Part 710 would modernize the rule by increasing dollar thresholds for certain procedural requirements. It also would afford greater flexibility to voluntarily liquidating FCUs to use electronic means to publish creditor notices and issue member share payments. In addition, the proposed amendment would limit any preliminary distributions to members to the insured amount of each share account. The proposed amendment would also clarify an existing required calculation.

Specifically, the proposed rule would: (1) amend Section 710.5 to permit voluntarily liquidating FCUs to publish required creditor notices in electronic media reasonably calculated to reach the general public in the area or areas where the FCUs do business; (2) amend Section 710.5 to increase the asset size threshold for requiring multiple creditor notices, exempting FCUs with less than $1 million in assets from the publication requirement and exempting FCUs with less than $50 million in assets from the multiple publication requirement; (3) amend Section 710.6 to specify that partial distributions to members, which are subject to the Regional Director's approval, must not exceed the insured limit of each member's share account; (4) further amend Section 710.6 to specify that, in calculating pro rata distributions to members, voluntarily liquidating FCUs must determine member share balances as of the date the members voted to approve the liquidation or the date on which all share drafts cleared, whichever is later; and (5) permit voluntarily liquidating FCUs to distribute member share payouts either by wire or other electronic means approved by a member or by mail or personal delivery.

B. Why Is the Board Proposing This Rule?

The Board is proposing this amendment to update the rule and provide relief from unnecessary regulatory burden. The proposed increase in asset-size thresholds recognizes both inflation and the current definition of small credit unions. The proposed rule also reflects the increased use of electronic and Internet communications, as well as electronic payment methods, by permitting voluntarily liquidating FCUs to use these methods to notify potential creditors and pay out member share accounts.

This proposed rule furthers the goals of ensuring an orderly liquidation process and the prompt payment of member shares by making voluntary liquidation less cumbersome and avoiding losses to the National Credit Union Share Insurance Fund that might ultimately be incurred if the subject FCU is involuntarily liquidated. The proposed rule also aims to reduce risk to the Fund by specifying that preliminary partial distributions to members must not exceed the insured limit of each member's share account. This limitation is proposed to guard against the problems that could arise if NCUA must convert a voluntary liquidation to an involuntary liquidation based on insolvency. If a voluntarily liquidating FCU discovers during the process that it is insolvent, then NCUA may place the credit union into involuntary liquidation. This finding could stem from conditions such as unanticipated creditor claims or difficulty in converting remaining assets to enough cash to pay all shares and liabilities. In this scenario, the procedures and priorities under Part 709 would apply, and general creditors would have preference over uninsured shareholders to the extent that they are uninsured. By limiting these interim distributions to each member's insured balance, the proposed rule would keep Part 709's priorities intact in case the credit union must enter involuntary liquidation. If the credit union remains solvent throughout the liquidation, then every member would receive the full balance at the end of the process, along with any available liquidating dividend.

Generally, the proposed rule is designed to reduce the burden on small credit unions by raising certain thresholds for procedural requirements. It also reduces the burden on FCUs generally by affording more flexibility in implementing voluntary liquidations and clarifying an existing requirement.

II. The Proposed Rule

A. Section 710.5(a)(1)

Under the proposed rule, FCUs would be allowed to publish the required creditor notice(s) in electronic media. With this update, voluntarily liquidating FCUs will have greater flexibility in notifying potential creditors, thereby increasing the efficiency of the process and decreasing the costs associated with publishing notices in newspapers.

Also, the proposed rule 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. The $50 million threshold is proposed to align with NCUA’s definition of small credit unions. Thus, the amendment seeks to reduce the burden on small credit unions with respect to the publication requirements.

B. Section 710.5(a)(2)

The amendment to this provision would increase the asset-size threshold applicable to publication requirements. Under this amendment, FCUs with assets equal to or greater than $1 million but less than $50 million would be required to publish just one notice, though FCUs could choose to publish more notices. This amendment retains the tiered structure of the publication requirement while increasing the dollar amounts to reflect inflation, growth in credit union assets, and NCUA's definition of small credit unions.

C. Section 710.5(a)(3)

This amendment also reflects an increase in thresholds applicable to the publication requirement. Specifically, this amendment exempts FCUs with assets under $1 million from the publication requirement. This increase from the current $500,000 threshold implemented in 1993 reflects inflation, growth in credit union assets over the past 20 years, and the Board's experience that smaller credit unions generally have a far less complex business model with a limited number of creditors.

D. Section 710.6(a)

This amendment limits approved partial distributions to the extent of share insurance for each member's share account. Under this limitation, a voluntarily liquidating FCU could only pay member share accounts up to the applicable share insurance limit during an interim distribution. This limitation, which would only apply to approved partial distributions and would only apply to large share accounts, would not diminish an affected member's ability to receive the remainder of the account once the liquidation is completed. If the FCU remains solvent, each member would receive the full account balance in the final distribution, along with any liquidating dividend.

E. Section 710.6(b)

This amendment clarifies the existing requirement to compute pro rata distributions to members by specifying that a voluntarily liquidating FCU would determine the member share balances as of the day that the members voted to approve liquidation, or the day on which all share drafts cleared, whichever is later. This addition is intended to avoid uncertainty in the computation, as share balances may change during the liquidation process.

F. Section 710.6(c)

Under this amendment, a voluntarily liquidating FCU would be permitted to distribute member share account payments by wire or other means that a member agrees to accept. This change, taking advantage of advanced technology, would increase the efficiency of the process by reducing the number of checks that an FCU must draw and deliver while decreasing the amount of time that the members wait to receive their funds.

III. 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.[1] For purposes of this analysis, NCUA considers small credit unions to be those having under $50 million in assets.[2] This proposed rule has no significant economic impact on FCUs as going concerns because it solely addresses procedures for voluntary

[1] 5 U.S.C. 603(a).
[2] 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).

liquidation. Also, the proposed rule increases certain dollar thresholds and affords greater flexibility to all FCUs engaging in voluntary liquidation. Accordingly, NCUA certifies the 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 burden.[3] 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 proposed rule does not impose or expand upon any existing reporting or recordkeeping requirements. This proposed 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 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. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

[3] 44 U.S.C. 3507(d).

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.[4]

List of Subjects

12 CFR Part 710

Voluntary Liquidation.

By the National Credit Union Administration Board on [________], 2014.

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Gerard Poliquin

Secretary of the Board

For the reasons discussed above, NCUA proposes to amend 12 CFR Part 710 as follows:

PART 710 – VOLUNTARY LIQUIDATION

[4] Public Law 105–277, 112 Stat. 2681 (1998).

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

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

2. Section 710.5(a)(1) is amended to read as follows:

(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.

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3. Section 710.5(a)(2) is amended to read as follows:

(a) * * *

(1) *   *   *

(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 710.5(a)(1) of this section at least once. The notice shall be published within seven days of the liquidation date.

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4. Section 710.5(a)(3) is amended by removing "$500,000" and replacing it with "$1 million".

5. Section 710.6(a) is amended to read as follows:

(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 of any account, as determined under part 745 of this chapter.

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6. Section 710.6(b) is amended to read as follows:

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(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.

* * * * *

7. Section 710.6(c) is amended to read as follows:

* * * * *

(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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