

National Credit Union Administration

§ 701.19

Regional Director may either disapprove the proposed individual or review the notice based on the information provided. If the credit union and the individual have submitted all requested information and the Regional Director has not issued a written decision within the applicable time period, the individual is approved.

(2) Waiver of prior notice requirement. Parties may petition the appropriate Regional Director for a waiver of the prior notice required under this section. Waiver may be granted if it is found that delay could harm the credit union or the public interest. Any waiver shall not affect the authority of NCUA to issue a Notice of Disapproval within 30 days of the waiver, or within 30 days of any subsequent required notice.

(3) Election of directors or credit committee members. (i) In the case of the election of a new member of the board of directors or credit committee member at a meeting of the members of a federally insured credit union, prior notice is not required. However, a completed notice must be filed with the appropriate Regional Director within 48 hours of the election.

(ii) If a director or credit committee member is disapproved by NCUA, the board of directors of the credit union may appoint its own alternate, to serve until the next annual meeting, contingent upon NCUA approval.

(e) *Commencement of service.* A proposed director, committee member or senior executive officer may begin to serve temporarily until the credit union and the individual are notified in writing of NCUA's approval or disapproval of the proposed addition or employment.

(f) *Notice of disapproval.* NCUA may disapprove the individual's serving as a director, committee member or senior executive officer if it finds that the competence, experience, character, or integrity of the individual with respect to whom a notice under this section is submitted indicates that it would not be in the best interests of the members of the credit union or of the public to permit the individual to be employed by, or associated with, the credit union. The Notice of Disapproval will advise the parties of their rights of ap-

peal pursuant to 12 CFR part 747 subpart J, of NCUA's Regulations.

[55 FR 43086, Oct. 26, 1990, as amended at 59 FR 36042, July 15, 1994; 60 FR 31911, June 19, 1995; 64 FR 28717, May 27, 1999; 66 FR 65624, Dec. 20, 2001]

§§ 701.15–701.18 [Reserved]

§ 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

§ 701.20

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).

[68 FR 23027, Apr. 30, 2003]

§ 701.20 [Reserved]

§ 701.21 Loans to members and lines of credit to members.

(a) *Statement of scope and purpose.* Section 701.21 complements the provisions of section 107(5) of the Federal Credit Union Act (12 U.S.C. 1757(5)) authorizing Federal credit unions to make loans to members and issue lines of credit (including credit cards) to members. Section 107(5) of the Act contains limitations on matters such as loan maturity, rate of interest, security, and prepayment penalties. Section 701.21 interprets and implements those provisions. In addition, § 701.21 states the NCUA Board's intent concerning preemption of state laws, and expands the authority of Federal credit unions to enforce due-on-sale clauses in real property loans. Also, while § 701.21 generally applies to Federal credit unions only, its provisions may be used by state-chartered credit unions with respect to alternative mortgage transactions in accordance with 12 U.S.C. 3801 *et seq.*, and certain provisions apply to loans made by federally insured state-chartered credit unions as specified in § 741.203 of this chapter. Part 722 of this chapter sets forth re-

12 CFR Ch. VII (1-1-04 Edition)

quirements for appraisals for certain real estate secured loans made under § 701.21 and any other applicable lending authority. Finally, it is noted that § 701.21 does not apply to loans by Federal credit unions to other credit unions (although certain statutory limitations in section 107 of the Act apply), nor to loans to credit union organizations which are governed by section 107(5)(D) of the Act and part 712 of this part.

(b) *Relation to other laws—(1) Preemption of state laws.* Section 701.21 is promulgated pursuant to the NCUA's Board's exclusive authority as set forth in section 107(5) of the Federal Credit Union Act (12 U.S.C. 1757(5)) to regulate the rates, terms of repayment and other conditions of Federal credit union loans and lines of credit (including credit cards) to members. This exercise of the Board's authority preempts any state law purporting to limit or affect:

(i) (A) Rates of interest and amounts of finance charges, including:

(1) The frequency or the increments by which a variable interest rate may be changed;

(2) The index to which a variable interest rate may be tied;

(3) The manner or timing of notifying the borrower of a change in interest rate;

(4) The authority to increase the interest rate on an existing balance;

(B) Late charges; and

(C) Closing costs, application, origination, or other fees;

(ii) Terms of repayment, including:

(A) The maturity of loans and lines of credit;

(B) The amount, uniformity, and frequency of payments, including the accrual of unpaid interest if payments are insufficient to pay all interest due;

(C) Balloon payments; and

(D) Prepayment limits;

(iii) Conditions related to:

(A) The amount of the loan or line of credit;

(B) The purpose of the loan or line of credit;

(C) The type or amount of security and the relation of the value of the security to the amount of the loan or line of credit;

(D) Eligible borrowers; and