

National Credit Union Administration

§ 702.1

(c) *Impressing a statutory lien.* Except as otherwise provided by federal law, a credit union can impress a statutory lien on a member's account(s)—

(1) *Account records.* By giving notice thereof in the member's account agreement(s) or other account opening documentation; or

(2) *Loan documents.* In the case of a loan, by giving notice thereof in a loan document signed or otherwise acknowledged by the member(s); or

(3) *By-Law or policy.* Through a duly adopted credit union by-law or policy of the board of directors, of which the member is given notice.

(d) *Enforcing a statutory lien—(1) Application of funds.* Except as otherwise provided by federal law, a federal credit union may enforce its statutory lien against a member's account(s) by debiting funds in the account and applying them to the extent of any of the member's outstanding financial obligations to the credit union.

(2) *Default required.* A federal credit union may enforce its statutory lien against a member's account(s) only when the member fails to satisfy an outstanding financial obligation due and payable to the credit union.

(3) *Neither judgment nor set-off required.* A federal credit union need not obtain a court judgment on the member's debt, nor exercise the equitable right of set-off, prior to enforcing its statutory lien against the member's account.

[64 FR 56956, Oct. 22, 1999]

PART 702—PROMPT CORRECTIVE ACTION

Sec.

702.1 Authority, purpose, scope and other supervisory authority.

702.2 Definitions.

Subpart A—Net Worth Classification

702.101 Measure and effective date of net worth classification.

702.102 Statutory net worth categories.

702.103 Applicability of risk-based net worth requirement.

702.104 Risk portfolios defined.

702.105 Weighted-average life of investments.

702.106 Standard calculation of risk-based net worth requirement.

702.107 Alternative components for standard calculation.

702.108 Risk mitigation credit.

APPENDIXES A–H TO SUBPART A

Subpart B—Mandatory and Discretionary Supervisory Actions

702.201 Prompt corrective action for “adequately capitalized” credit unions.

702.202 Prompt corrective action for “undercapitalized” credit unions.

702.203 Prompt corrective action for “significantly undercapitalized” credit unions.

702.204 Prompt corrective action for “critically undercapitalized” credit unions.

702.205 Consultation with State officials on proposed prompt corrective action.

702.206 Net worth restoration plans.

Subpart C—Alternative Prompt Corrective Action for New Credit Unions

702.301 Scope and definition.

702.302 Net worth categories for new credit unions.

702.303 Prompt corrective action for “adequately capitalized” new credit unions.

702.304 Prompt corrective action for “moderately capitalized,” “marginally capitalized” and “minimally capitalized” new credit unions.

702.305 Prompt corrective action for “uncapitalized” new credit unions.

702.306 Revised business plans for new credit unions.

702.307 Incentives for new credit unions.

Subpart D—Reserves

702.401 Reserves.

702.402 Full and fair disclosure of financial condition.

702.403 Payment of dividends.

AUTHORITY: 12 U.S.C. 1766(a), 1790d.

SOURCE: 65 FR 8584, Feb. 18, 2000, unless otherwise noted.

§ 702.1 Authority, purpose, scope and other supervisory authority.

(a) *Authority.* Subparts A, B and C of this part and subpart L of part 747 of this chapter are issued by the National Credit Union Administration pursuant to section 216 of the Federal Credit Union Act (FCUA), 12 U.S.C. 1790d (section 1790d), as added by section 301 of the Credit Union Membership Access Act, Pub. L. No. 105–219, 112 Stat. 913 (1998). Subpart D of this part is issued pursuant to FCUA section 120, 12 U.S.C. 1766.

§ 702.2

12 CFR Ch. VII (1–1–06 Edition)

(b) *Purpose.* The express purpose of prompt corrective action under section 1790d is to resolve the problems of federally-insured credit unions at the least possible long-term loss to the National Credit Union Share Insurance Fund. This part carries out the purpose of prompt corrective action by establishing a framework of mandatory and discretionary supervisory actions, applicable according to a credit union's net worth ratio, designed primarily to restore and improve the net worth of federally-insured credit unions.

(c) *Scope.* This part implements the provisions of section 1790d as they apply to federally-insured credit unions, whether federally- or state-chartered; to such credit unions defined as "new" pursuant to section 1790d(b)(2); and to such credit unions defined as "complex" pursuant to section 1790d(d). Certain of these provisions also apply to officers and directors of federally-insured credit unions. This part does not apply to corporate credit unions. Procedures for issuing, reviewing and enforcing orders and directives issued under this part are set forth in subpart L of part 747 of this chapter, 12 CFR 747.2001 *et seq.*

(d) *Other supervisory authority.* Neither §1790d nor this part in any way limits the authority of the NCUA Board or appropriate State official under any other provision of law to take additional supervisory actions to address unsafe or unsound practices or conditions, or violations of applicable law or regulations. Action taken under this part may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the NCUA Board or appropriate State official, including issuance of cease and desist orders, orders of prohibition, suspension and removal, or assessment of civil money penalties, or any other actions authorized by law.

§ 702.2 Definitions

Except as provided below, the terms used in this part have the same meanings as set forth in FCUA sections 101 and 216, 12 U.S.C. 1752, 1790d.

(a) *Appropriate regional director* means the director of the NCUA regional office having jurisdiction over federally-insured credit unions in the state

where the affected credit union is principally located.

(b) *Appropriate State official* means the commission, board or other supervisory authority having jurisdiction over credit unions chartered by the State which chartered the affected credit union.

(c) *Credit union* means a federally-insured, natural person credit union, whether federally- or State-chartered, as defined by 12 U.S.C. 1752(6).

(d) *CUSO* means a credit union service organization as described in 12 CFR 712 *et seq.* for federally-chartered credit unions, and as defined under State law for State-chartered credit unions.

(e) *NCUSIF* means the National Credit Union Share Insurance Fund as defined by 12 U.S.C. 1783.

(f) *Net worth* means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles. Retained earnings consists of undivided earnings, regular reserves, and any other appropriations designated by management or regulatory authorities. This means that only undivided earnings and appropriations of undivided earnings are included in net worth. For low income-designated credit unions, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims, including claims of creditors, shareholders and the NCUSIF. For any credit union, net worth does not include the allowance for loan and lease losses account.

(g) *Net worth ratio* means the ratio of the net worth of the credit union (as defined in paragraph (f) of this section) to the total assets of the credit union (as defined by a measure chosen under paragraph (j) of this section).

(h) *New credit union* means a federally-insured credit union which both has been in operation for less than ten (10) years and has \$10,000,000 or less in total assets.

(i) *Senior executive officer* means a senior executive officer as defined by 12 CFR 701.14(b)(2).

(j) *Shares* means deposits, shares, share certificates, share drafts, or any other depository account authorized by federal or state law.