

LEGISLATIVE UPDATE

- WHO:** The National Credit Union Administration has issued a revised Regulation concerning share insurance.
- WHAT:** The new Regulation amends Part 745 Share Insurance and Appendix of the National Credit Union Administration Regulations to incorporate the requirements of Section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("the Act").
- WHEN:** The new Regulation is effective June 24, 2011.
- WHY:** This temporary additional insurance coverage is intended to encourage depositors to keep their funds in credit unions and banks.

SUMMARY.

The revision to NCUA Regulation Part 745 provides, on a temporary basis, for NCUA to fully insure the net amount of any member or depositor at an insured credit union in a noninterest-bearing transaction account. The new insurance coverage is separate from and in addition to other insurance coverage provided by NCUA Share Insurance Rules and imposes certain notice and disclosure requirements on the Credit Union, which must be implemented by June 24, 2011.

BACKGROUND.

The Amendment to Part 745 of the NCUA Regulations is intended to implement §343 of the Act to include full share insurance, beyond the Standard Maximum Share Insurance Amount, for the net amount held in a noninterest-bearing account by any member or depositor at an insured credit union. The Credit Union is not required to take any action to receive this additional insurance coverage.

DEFINITION OF A NONINTEREST-BEARING ACCOUNT.

Section 745.1 Definitions defines a noninterest-bearing account as follows:

- (f) The term *noninterest-bearing transaction account* means an account or deposit maintained at an insured credit union –
- (1) With respect to which either interest or dividends are neither accrued nor paid;
 - (2) On which the account holder or depositor is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and

- (3) On which the insured credit union does not reserve the right to require advance notice of an intended withdrawal. ¹

The definition does not include negotiable orders of withdrawal (NOW) accounts, money-marked accounts (MMA), or interest on lawyers trust accounts (IOLTA).

Whether an account at the Credit Union is considered noninterest-bearing or nondividend-bearing is determined by the terms of the Account Agreement and not by the fact that the dividend rate on an account may be zero percent at a particular point in time. For example, an insured credit union might offer an account with a dividend rate of zero percent except when the balance exceeds a prescribed threshold. Similarly, an account that normally bears dividends might have a dividend rate of zero for a particular period if the Credit Union determines not to, or is prohibited from, declaring a dividend for that period. Such accounts would not qualify as a noninterest-bearing transaction account, even when the balance is less than the prescribed threshold or no dividend is declared and the dividend rate is zero percent for a particular period.

The waiving of account fees would not be treated as the earning of dividends. For example, an insured credit union can sometimes waive fees or provide fee-reducing credits for members with share draft accounts. Such account features would not prevent an account from qualifying as a noninterest-bearing transaction account, as long as the account otherwise satisfies the definition of a noninterest-bearing transaction account.

INSURANCE COVERAGE.

Under §343 of the Act, all funds held in a noninterest-bearing transaction account are fully insured without limit. This unlimited insurance coverage is separate from, and in addition to, the coverage provided to members with respect to other accounts held at the Credit Union. This means that the funds held in noninterest-bearing transaction accounts will not be counted for purposes of determining the amount of share insurance on shares held in other accounts, and in other rights and capacities at the same credit union.

For example, if a member has a \$225,000.00 Share Certificate, and a no dividend share draft account with a balance of \$300,000.00, both held in a single ownership capacity, he or she would be fully insured for \$525,000.00 (plus dividends accrued on the Share Certificate), assuming the member has no other single-ownership funds at the same credit union.

CERTAIN SWEEP FUNDS.

Section 745.14 *Noninterest-bearing transaction accounts* states that funds swept from a noninterest-bearing transaction account to a noninterest-bearing savings deposit account as being in a noninterest-bearing transaction account.

¹ In a footnote to the Regulation, NCUA has indicated that the fact that the Credit Union Standard Bylaws contain a provision requiring members to give up the sixty days written notice of an intention to withdraw, the who any part of amounts paid in by members does not, by itself, prevent an account from otherwise satisfying the definition of a noninterest-bearing account.

DISCLOSURE AND NOTICE REQUIREMENTS.

Section 745.14(c) *Disclosure and notice requirements* requires any credit union that offers noninterest-bearing transaction accounts to post prominently the notice attached hereto as Attachment A in the following locations:

- The lobby of the Credit Union's main office;
- In each branch office; and
- If the Credit Union offers Internet deposit services, on the Credit Union's Web site.

Section 745.14(c)(2) further requires that if the Credit Union uses sweep arrangements, modifies the terms of account, or takes other action that results in funds no longer being eligible for full coverage under Part 745, the Credit Union must notify affected members and clearly advise them in writing that such actions will affect their share insurance coverage.

Should you have any questions, please feel free to contact our office.

Peter J. Liska, LLC
June 7, 2011

ATTACHMENT "A"

**NOTICE OF CHANGES IN TEMPORARY NCUA INSURANCE COVERAGE FOR
TRANSACTION ACCOUNTS**

All funds in a "noninterest-bearing transaction account" are insured in full by the National Credit Union Administration through December 31, 2012. This temporary unlimited coverage is in addition to, and separate from, the coverage of at least \$250,000 available to members under the NCUA's general share insurance rules.

The term "noninterest-bearing transaction account" includes a traditional share draft account (or demand deposit account) on which the insured credit union pays no interest or dividend. It does *not* include any transaction account that may earn interest or dividends, a negotiable order of withdrawal ("NOW") account, money-market deposit account, and Interest on Lawyers Trust Account ("IOLTA"), even if share drafts may be drawn on the account. For more information about temporary NCUA insurance coverage of transaction accounts, visit www.ncua.gov.