

**NATIONAL CREDIT UNION
ADMINISTRATION****12 CFR Parts 701 and 724****Organization and Operation of Federal
Credit Unions; Trustees and
Custodians of Pension Plans**

AGENCY: National Credit Union
Administration (NCUA).

ACTION: Interim final rule with request
for comments.

SUMMARY: On February 20, 1998, NCUA issued a letter to federally insured credit unions regarding share insurance coverage on member accounts established as Education IRAs, Roth IRAs, Savings Incentive Match Plan for Employees and Medical Savings Accounts. Although these accounts can be established in federal credit unions, the letter noted that federal credit unions cannot act as trustees or custodians for these types of accounts. The basis for that statement was the current wording of NCUA regulations, which references specific provisions of the Internal Revenue Code. This interim rule corrects that part by including additional specific references to Internal Revenue Code provisions for certain of these accounts. It also makes a conforming amendment to the rule regarding retirement benefits for federal credit union employees.

DATES: Effective March 24, 1998.
Comments must be received on or
before May 20, 1998.

ADDRESSES: Comments should be
directed to Becky Baker, Secretary of the
Board. Mail or hand-deliver comments
to: National Credit Union
Administration, 1775 Duke Street,
Alexandria, VA 22314-3428. Fax
comments to (703) 518-6319. E-mail
comments to boardmail@ncua.gov.
Please send comments by one method
only.

FOR FURTHER INFORMATION CONTACT:
James J. Engel, Deputy General Counsel,
at the above address, or telephone: (703)
518-6540.

SUPPLEMENTARY INFORMATION:**Background**

NCUA recently issued a Letter to
Credit Unions (Letter No. 98-CU-5,
February 20, 1998) to advise all
federally insured credit unions of share
insurance coverage on several new types
of member accounts: Education IRAs,
Roth IRAs, Savings Incentive Match
Plan for Employees (SIMPLE) accounts
and Medical Savings Accounts (MSAs).
While these accounts could be
established in federal credit unions, the
letter noted that federal credit unions

could not act as trustees or custodians
of such accounts. This has caused
considerable confusion because federal
credit unions have been serving as
traditional IRA trustees or custodians
since 1975. (12 CFR Part 721—
Incidental Powers, § 721.4. 40 FR 25582,
June 17, 1975.) Currently, however,
because part 724 specifically references
only Internal Revenue Code (IRC)
sections 401(d) and 408, it
unintentionally limits federal credit
union involvement in the newer
accounts established under different IRC
provisions. The purpose of this interim
rule is to correct this problem
immediately with respect to Roth IRAs
and Education IRAs and to request
comment on additional changes that
may be needed for these accounts as
well as for MSAs and similar accounts.

The Letter to Credit Unions was
issued in response to recent
amendments to the IRC whereby
Congress created new types of accounts
that receive special tax treatment.
Congress specified the types of
organizations that could serve as
fiduciaries for these accounts. Congress
included federally insured credit unions
in the list of qualified organizations by
including them in a special definition of
“bank” contained in the current IRC
section 408(n). This definition has been
used in IRC section 401(f)(2)—for 401(d)
plans (Keogh Accounts)—and in IRC
section 408(a)(2) for traditional IRAs
established under IRC section 408. Part
724 references both 401(d) and 408
plans. Congress has now used this same
definition for MSAs, IRC section
220(d)(1)(B), and Education IRAs, IRC
section 530(b)(1)(B). For a Roth IRA,
Congress provided in IRC section
408A(a) that such an account is to be
treated as an individual retirement plan,
unless otherwise noted. An individual
retirement plan includes an IRA under
408. IRC section 7701(a)(37). Thus,
federal credit unions, being federally
insured, are qualified to be fiduciaries of
all of these types of accounts.

A fiduciary, either a trustee or
custodian, of these newer types of
accounts performs essentially the same
types of duties as a fiduciary of a
traditional Keogh or IRA. In the case of
a federal credit union, the funds are
invested in insured share accounts. As
a fiduciary, a federal credit union
maintains accounting records similar to
those for any savings account and sends
the member and the IRS tax
information. In the case of self-directed
plans, a federal credit union follows a
member's instructions and facilitates the
transfer to other investments in
accordance with § 724.2. For some types
of accounts, a federal credit union

would also withhold income tax and
compute periodic payment amounts. In
general, the highest administrative
burden is on fiduciaries of traditional
IRAs and Keogh accounts because these
accounts are subject to complex
distribution requirements.

Federal credit unions have been
providing IRA trustee and custodial
services for almost 23 years. In its
examination and supervision of federal
credit unions during this period of time,
NCUA has seen no indication of
regulatory problems arising from this
activity. This historical performance
provides ample evidence that federal
credit unions can provide the same
services for the new types of accounts.
However, this interim rule will only
address the Roth and Education IRAs.
The provisions regarding these accounts
became effective January 1, 1998, and it
is the Board's understanding that these
are the types of accounts that federal
credit union members are now most
interested in establishing. There is no
public interest served by delaying
immediate action on these accounts.

Amendments**1. Part 701**

Federal credit unions are authorized
to provide reasonable retirement
benefits for their employees under
§ 701.19. If a federal credit union is to
be a trustee or custodian, the retirement
plan must be an IRA maintained in
accordance with part 724. To conform to
the changes in part 724, this section is
being amended by deleting the phrase
“an individual retirement account.”
Section 701.19 will now require that the
plan be “authorized and” maintained in
accordance with part 724.

2. Part 724

Part 724 is being amended only with
regard to Roth IRAs and Education
IRAs. This is accomplished by adding
references to IRC sections 408A, for
Roth IRAs, and 530, for Education IRAs,
in § 724.1. There is no need for a
specific amendment to cover SIMPLE
Retirement Accounts (SRAs) because
those accounts are already covered
under IRC section 408, specifically
section 408(p), and thus already covered
by § 724.1.

Request for Comments

The Board is requesting comments on
the changes made by this interim final
rule concerning Roth IRAs and
Education IRAs. As noted above, the
Board is not amending or proposing any
specific amendments regarding MSAs.
To do so now would require more
extensive modification to part 724, or

possibly a completely new rule, and would only delay the much needed IRA revisions.

Further, MSAs are a pilot program and the Board is not aware of any particular urgency to address these types of accounts immediately.

The Board expects to issue shortly a request for comments or advanced notice of proposed rulemaking to solicit comments on MSAs and will evaluate the need for regulatory changes after receipt of comments. That notice will likely solicit comments as well regarding whether other regulatory changes are needed to address IRC section 401(k) plans, including SIMPLE 401(k) plans, and Simplified Employee Pension (SEP) plans.

Regulatory Procedures

Regulatory Flexibility Act

This interim final rule conforms the current regulation to recent changes in the federal tax law and does not expand upon the nature of the activity authorized for a federal credit union. The Board has determined and certifies that this 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.

Paperwork Reduction Act

This interim rule does not impose any paperwork requirements.

Executive Order 12612

This interim rule only applies to federal credit unions. It has no effect on the regulation of state-chartered credit unions.

List of Subjects

12 CFR Part 701

Credit unions.

12 CFR Part 724

Credit unions, Pensions, Reporting and recordkeeping requirements, Trusts and trustees.

By the National Credit Union Administration Board, this 13th day of March, 1998.

Becky Baker,

Secretary, NCUA Board.

For the reasons stated in the preamble, NCUA amends 12 CFR chapter VII 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.

2. Revise the second sentence of § 701.19(a) to read as follows:

§ 701.19 Retirement benefits for employees of Federal credit unions.

(a) * * * In those cases where a Federal credit union is to be a plan trustee or custodian, the plan must be authorized and maintained in accordance with the provisions of part 724 of this chapter. * * *

PART 724—TRUSTEES AND CUSTODIANS OF PENSION PLANS

3. The authority citation for part 724 is revised to read as follows:

Authority: 12 U.S.C. 1757, 1765, 1766 and 1787.

4. In § 724.1, revise the section heading and first sentence to read as follows:

§ 724.1 Federal credit unions acting as trustees and custodians of pension and retirement plans.

A federal credit union is authorized to act as trustee or custodian, and may receive reasonable compensation for so acting, under any written trust instrument or custodial agreement created or organized in the United States and forming part of a pension or retirement plan which qualifies or qualified for specific tax treatment under sections 401(d), 408, 408A and 530 of the Internal Revenue Code (26 U.S.C. 401(d), 408, 408A and 530), for its members or groups of its members, provided the funds of such plans are invested in share accounts or share certificate accounts of the Federal credit union. * * *

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–58–AD; Amendment 39–10421; AD 98–07–03]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 412 Helicopters and Agusta S.p.A. Model AB412 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. (Bell) Model 412 helicopters and Agusta S.p.A. (Agusta) Model AB412 helicopters. This action requires a temporary reduction of the never-exceed velocity (Vne) limitation until an inspection of the tail rotor yoke (yoke) assembly for fatigue damage and installation of a redesigned yoke flapping stop are accomplished. Recurring periodic and special inspections to detect occurrences of yoke overload are also required. This amendment is prompted by laboratory tests and engineering analyses that indicated that the yoke assembly is susceptible to fatigue damage due to unforeseen static and dynamic loading of the tail rotor against the original flapping stop. The actions specified in this AD are intended to prevent fatigue failure of the yoke that could result in loss of control of the tail rotor and subsequent loss of control of the helicopter.

DATES: Effective April 8, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 8, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 26, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–58–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466 for the Bell Model 412 helicopters; and