event of a default by the lessee, a default in the leasing company's obligations to you, or a material adverse change in the leasing company's financial condition; and

(d) You take all necessary steps to record and perfect your security interest in the leased property. Your state's Commercial Code may treat the automobiles as inventory, and require a filing with the Secretary of State.

§ 714.4 What are the lease requirements?

(a) Your lease must be a net lease. In a net lease, your member assumes all the burdens of ownership including maintenance and repair, licensing and registration, taxes, and insurance;

(b) Your lease must be a full payout lease. In a full payout lease, you must reasonably expect to recoup your entire investment in the leased property, plus the estimated cost of financing, from the lessee's payments and the estimated residual value of the leased property at the expiration of the lease term; and

(c) Your estimated residual value may not exceed 25% of the original cost of the leased property unless the amount above 25% is guaranteed. Estimated residual value is the projected value of the leased property at lease end. Estimated residual value must be reasonable in light of the nature of the leased property and all circumstances relevant to the leasing arrangement.

§ 714.5 What is required if an estimated residual value greater than 25% is used?

You may use an estimated residual value greater than 25% of the original cost of the leased property if a financially capable party guarantees the amount above 25% of the original cost of the property. The guarantor may be the manufacturer. The guarantor may also be an insurance company with an A.M. Best rating of at least a B+, or with at least the equivalent of an A.M. Best B+ rating from another major rating company. You must obtain or have on file financial documentation demonstrating that the guarantor has the resources to meet the guarantee.

§ 714.6 Are you required to retain salvage powers over the leased property?

You must retain salvage powers over the leased property. Salvage powers protect you from a loss and provide you with the power to take action if there is an unanticipated change in conditions that threatens your financial position by significantly increasing your exposure to risk. Salvage powers allow you:

(a) As the owner and lessor, to take reasonable and appropriate action to salvage or protect the value of the property or your interests arising under the lease; or

(b) As the assignee of a lease, to become the owner and lessor of the leased property pursuant to your contractual rights, or take any reasonable and appropriate action to salvage or protect the value of the property or your interests arising under the lease.

§ 714.7 What are the insurance requirements applicable to leasing?

(a) You must maintain a contingent liability insurance policy with an endorsement for leasing or be named as the co-insured if you do not own the leased property. Contingent liability insurance protects you should you be sued as the owner of the leased property. You must use an insurance company with a nationally recognized industry rating of at least a B+.

(b) Your member must carry the normal liability and collateral protection insurance on the leased property. You must be named as an additional insured on the liability insurance policy and as the loss payee on the collateral protection insurance policy.

§ 714.8 Are the early payment provisions, or interest rate provisions, applicable in leasing arrangements?

You are not subject to the early payment provisions set forth in § 701.21(c)(6) of this chapter. You are also not subject to the interest rate provisions in § 701.21(c)(7).

§ 714.9 Are indirect leasing arrangements subject to the purchase of eligible obligation limit set forth in § 701.23 of this chapter?

Your indirect leasing arrangements are not subject to the purchase of eligible obligation rules set forth in § 701.23 of this chapter if:

(a) You review the lease and other documents to determine that the arrangement complies with your leasing polices; and

(b) You receive a full assignment of the lease no more than five business days after it is signed by your member and a leasing company.

§ 714.10 What other laws must you comply with when engaged in leasing?

You must comply with the Consumer Leasing Act, 15 U.S.C. 1667–67f, and its implementing regulation, Regulation M, 12 CFR part 213. You must comply with state laws on consumer leasing, but only to the extent that the state leasing laws are consistent with the Consumer Leasing Act, 15 U.S.C. 1667e, or provide the member with greater protections or benefits than the Consumer Leasing Act. You are also subject to the lending rules set forth in § 701.21 of this chapter, except as provided in § 714.8 and § 714.9 of this part. The lending rules in § 701.21 address the preemption of other state and federal laws that impact on credit transactions.

[FR Doc. 99–26717 Filed 10–14–99; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 724 and 745

Trustees and Custodians of Pension Plans; Share Insurance and Appendix

AGENCY: National Credit Union Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Credit Union Administration (NCUA) proposes to revise its rules regarding a federal credit union's authority to act as trustee or custodian of pension plans. The proposal permits federal credit unions in a territory, including the trust territories, or a possession of the United States, or the Commonwealth of Puerto Rico, to offer trustee or custodian services for Individual Retirement Accounts (IRAs), where otherwise permitted.

DATES: Comments must be received on or before December 14, 1999.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 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: Dianne M. Salva, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION: NCUA has received many inquiries concerning the permissibility of federal credit unions (FCUs) in Puerto Rico offering IRA services to members. In the past, the agency has responded that FCUs in Puerto Rico cannot provide the trustee services attendant to an IRA account. Part 724 of NCUA's regulations permits FCUs to serve as trustees for IRA accounts only if the IRA accounts qualify for specific tax treatment under the Internal Revenue Code (IRC), and if they are created or organized in the United States. Part 724 has its roots in the Employee Retirement Income Security Act of 1974 (ERISA). ERISA amended the IRC so that federally-insured credit unions were recognized

as permissible trustees or custodians of Keogh plans and IRAs. ERISA, Pub. L. 93–406, § 1022(f) (1974). However, unlike banks and savings and loans, credit unions did not have other statutory authority to act as trustees; yet there was significant interest among credit unions in providing these trust services. NCUA reasoned that the incidental powers clause of the Federal Credit Union Act (FCUA), together with the IRC, made it possible for credit unions to perform the trustee and custodial function recognized by the IRC. But this finding was narrowly drawn; credit unions would not be authorized to provide general discretionary trustee services and they were not to act as trustees in cases other than pension plans. Further, NCUA determined that funds held in trust would be limited to share and share certificate accounts.

In 1985, NCUA published Interpretive Ruling and Policy Statement 85–1 (IRPS 85–1) in which it clarified its position that FCUs were permitted to act as trustees or custodians of IRA or Keogh plans established under the IRC, as long as the initial contribution to the plan was made to a share or share certificate account and the FCU would engage only in custodial duties with no exercise of investment discretion or advice. After the initial contribution was made to a share account, the IRA or Keogh was ''self-directed'' so that members could order subsequent transfers at their own risk. The preamble to IRPS 85–1 briefly retraced the history of FCU authority to serve as trustees of IRA and Keogh plans. It cites the ERISA amendment to the IRC recognizing FCUs as permissible trustees as the catalyst for the NCUA Board's finding that FCUs were authorized to act as trustees. However, it credits a 1978 amendment to the FCUA, which added a section covering share insurance of IRA and Keogh plans, as providing the statutory authority for FCUs to serve as trustees. 50 FR 48,176, Nov. 22, 1985.

In 1990, NCUA amended its pension trustee regulation, now redesignated 12 CFR part 724, to incorporate IRPS 85–1. In 1997, IRPS 85–1 was rescinded. Because of the strict limitations imposed on the trustee services FCUs offer members in connection with these types of accounts, NCUA has not encountered significant safety and soundness concerns related to IRA or Keogh accounts.

Today, the policy, as stated in 12 CFR part 724, still permits FCUs to offer IRAs and Keogh accounts created in accordance with the IRS Code. It is the IRC that requires such trust accounts be created in the United States. 26 U.S.C. 408(a). IRS regulations provide a definition of the United States limited to the States and the District of Columbia. 26 U.S.C. 7701(a)(9). The internal revenue laws of the United States are generally inapplicable in Puerto Rico. 48 U.S.C. 734. This effectively excludes IRAs created in the Commonwealth of Puerto Rico from the application of these provisions of the IRC and, therefore, excludes federal credit unions in Puerto Rico from benefiting from the authority granted by 12 CFR part 724. For some U.S. territories, such as Guam, the United States Code specifically extends the income tax laws of the United States to the territory, with the modification that ''Guam'' be substituted for the term ''United States'' in the territorial version of the law. 48 U.S.C. 1421i. The Northern Mariana Islands are the beneficiary of a similar arrangement. 48 U.S.C. 1681. The net effect of this is that IRAs can be established in these territories. The Virgin Islands, on the other hand, are subject to the IRC, but without the modification that ''Virgin Islands'' be substituted for the term ''United States.'' 48 U.S.C. 1397. This operates to prevent credit unions in the Virgin Islands from offering IRAs, because they cannot meet the IRC requirement that an IRA trust be created or organized in the United States.

The Puerto Rico Internal Revenue Code of 1994 (PRITA) is similar to the IRC. Like the IRC, the PRITA provides for a tax-deferred, individual retirement account for its citizens and, like the IRC, recognizes insured FCUs as permissible trustees for PRITA–IRAs established under Puerto Rican law. P.R. Laws Ann. Tit. 13, § 8569 (1995). However, because NCUA's regulation tracks the language of the IRC, which requires such trusts to be created in the United States, FCUs in Puerto Rico have been unable to meet their members' demands for PRITA–IRA trustee services.

The NCUA Board believes that FCUs in Puerto Rico should also be permitted to offer PRITA–IRAs to their members. While the FCUA does not grant FCUs plenary trust powers, it does permit them to exercise such incidental powers as are necessary to carry on their business. 17 U.S.C. 1757(17). When an FCU serves as a trustee for a member's IRA share or share certificate account, it does not exercise the powers normally associated with a trust account. Given that the discretion exercised by an FCU as trustee for this type of account is so limited, the function of the FCU as trustee is not significantly different from its function as the issuer of share accounts and share certificates. Based on the foregoing, the Board finds that the authority to offer these accounts is incidental to the FCU's authority to issue share accounts and share certificates. 12 U.S.C. 1757(6). Therefore, FCUs in Puerto Rico are authorized by the incidental powers clause of the FCUA to offer IRAs created under PRITA. But, the authority must be equally narrow as that granted to FCUs offering IRA trust services in the United States. That is, the initial contribution to the plan must be made to a share or share certificate account, and the FCU may engage only in custodial duties with no exercise of investment discretion or advice. After the initial contribution is made to a share account, members must direct any subsequent transfer of the funds at their own risk.

The NCUA Board has further found that, for insurance purposes, PRITA–IRAs will be treated like IRAs created in the United States. The present vested ascertainable interest of the participant will be insured up to $100,000 separately from other accounts of the participant or designated beneficiary.

Medical Savings Accounts

In the future, the NCUA Board may consider a further amendment of part 724 to authorize FCUs to serve as trustees for medical savings accounts (MSAs). An MSA is another type of tax-deferred product which requires limited trustee services, similar to those required for an IRA. The Internal Revenue Service (IRS) is currently conducting a pilot program to permit financial institutions, including credit unions, to offer MSAs. On February 20, 1998, NCUA issued Letter to Credit Unions No. 98–CU–5, which stated that NCUA considered MSAs to be insured member accounts, but that FCUs could not act as an MSA custodian or trustee. The IRS pilot program will be completed in 2000, and it is possible in the near future legislation authorizing it on a permanent basis may be adopted. If and when the full contours of a permanent MSA program are announced, the NCUA Board will determine whether it will make any additional amendments to the regulations.

Regulatory Procedures

Paperwork Reduction Act

This regulation, if adopted, will impose no additional information collection, reporting or record keeping requirements.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), NCUA certifies that this

proposed rule will not have a significant economic impact on a substantial number of small entities. NCUA expects that this proposal will not: (1) have significant secondary or incidental effects on a substantial number of small entities; or (2) create any additional burden on small entities. These conclusions are based on the fact that the proposed regulations merely extend the authority to offer a service to members. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12612

This regulation, if adopted, will only apply to federal credit unions.

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed amendment is understandable and minimally intrusive if implemented as proposed.

List of Subjects

12 CFR Part 724

Credit unions, Pensions, Trusts and trustees.

12 CFR Part 745

Credit unions, Pensions, Share insurance, Trusts and trustees.

By the National Credit Union Administration Board on October 6, 1999.

Becky Baker,

Secretary of the Board.

For the reasons set out in the preamble, the NCUA proposes to amend 12 CFR chapter VII to read as follows:

PART 724—TRUSTEES AND CUSTODIANS OF PENSION PLANS

1. The authority citation for part 724 continues to read as follows:

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

2. In § 724.1, remove the first sentence and add two sentences in its place 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 members, provided the funds of such plans are invested in share accounts or share certificate accounts of the federal credit union. Federal credit unions located in a territory, including the trust territories, or a possession of the United States, or the Commonwealth of Puerto Rico, are also authorized to act as trustee or custodian for such plans, if authorized under sections 401(d), 408, 408A and 530 of the Internal Revenue Code as applied to the territory or possession or under similar provisions of territorial law. * * *

PART 745—SHARE INSURANCE AND APPENDIX

3. The authority citation for part 745 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789.

4. Amend § 745.9–2 by revising the first sentence of paragraph (a) to read as follows:

§ 745.9–2 IRA/Keogh accounts.

(a) The present vested ascertainable interest of a participant or designated beneficiary in a trust or custodial account maintained pursuant to a pension or profit-sharing plan described under section 401(d) (Keogh account) or sections 408(a), 408A or 530 (IRA) of the Internal Revenue Code or similar provisions of law applicable to a U.S. territory or possession, will be insured up to $100,000 separately from other accounts of the participant or designated beneficiary. * * *

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[FR Doc. 99–26754 Filed 10–14–99; 8:45 am]

BILLING CODE 7535–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Help Supply Services

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes a size standard of $10 million in average annual receipts for Help Supply Services—Standard Industrial Classification (SIC) 7363. The current size standard for this industry is $5 million. SBA proposes this revision to better define the size of business in this industry that SBA believes should be eligible for Federal small business assistance programs. SBA also proposes clarifying language in the small business size regulations about affiliation when a Professional Employer Organization (PEO) is co-employer of a firm's employees.

DATES: Submit comments on or before December 14, 1999.

ADDRESSES: Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 3rd Street, S.W., Mail Code 6880, Washington D.C. 20416. SBA will make all public comments available to any person or entity upon request.

FOR FURTHER INFORMATION CONTACT: Patricia B. Holden, Office of Size Standards, (202) 205–6618 or (202) 205–6385.

SUPPLEMENTARY INFORMATION: SBA received requests from the public to review the size standard for the Help Supply Services industry (SIC 7363). These requests express concern that the size standard has not kept pace with the rapid growth in the industry due in part to the trends of outsourcing and downsizing. The industry has changed in two ways; help supply firms are larger and they are providing a wider range of personnel to businesses. One request also urged SBA to allow help supply firms to exclude funds collected for and remitted to unaffiliated third parties from gross receipts, as is currently done for travel agents, real estate agents, and others, since 60 percent to 85 percent of revenues on many Federal contracts are ''passed through'' to a firm's employees or associates.

The current size standard for this industry, $5 million, is based on gross billings including funds paid to employees (sometimes referred to as ''associates''). Based on a review of industry data, SBA proposes increasing the size standard for the Help Supply Services industry to $10 million in average annual receipts. SBA does not propose a change to the way average annual receipts are calculated for firms in the Help Supply Services Industry (SIC code 7363). Under SBA's size regulations (13 CFR 121.104), the size of a firm for a receipts-based size standard is based on information reported on a firm's Federal tax returns. Generally, receipts reported to the Internal Revenue Service (IRS) include a firm's gross receipts or sales from provision of goods or services. As explained below, SBA evaluated this issue and disagrees that these types of receipts should be excluded from the calculation of size for firms in this industry. Accordingly, the following discussion explains the reasons for the proposed revision.