

The Technical Guide

Is Your Credit Union Eligible for RegFlex?

Has your credit union earned a composite CAMEL 1 or 2 for the past two consecutive exams? Does your credit union have a net worth ratio of 9% or greater, or if you are a complex credit union are you either the higher of 200 basis points over your risk-based net worth level or 9% net worth?

If you can answer Yes to both of these questions, then your credit union is exempt from certain NCUA Regulations under the Regulatory Flexibility Program. The Regulatory Flexibility (RegFlex) Program is effective as of March 1, 2002.

The exemption is automatic for those credit unions meeting the criteria stated above. There is no application/approval process by National Credit Union Administration (NCUA). NCUA will be notifying credit unions of their eligibility during the examination process.

If your credit union only meets one of the criteria, you can apply to your NCUA Regional Director for a RegFlex designation. For example:

- You are a CAMEL 3, but have a net worth ratio greater than 9%
- You are a CAMEL 1 or 2, but have a net worth ratio less than 9%
- You are a complex credit union with a CAMEL 1 or 2, but have a risk-based net worth less than 9% or 200 basis points over risk-based net worth requirements

What Rules are You Exempt From?

If you meet the criteria, your credit union is exempt from the following Sections of NCUA Regulations: 701.25; 701.32(b) and (c); 701.36(a), (b), and (c); 703.40(c) 6; 703.90(c); and 703.110(d). You are also granted additional authority under Section 701.23. An explanation of each section follows below.

1) **Section 701.25 – Charitable Donations**

The current rule limits charitable donation recipients to those organizations in your credit union's community. In addition, the Board of Directors must approve all donations after determining the donations are in the best interests of the credit union and are reasonable for the size and financial condition of your credit union. Credit unions meeting RegFlex criteria are exempt from the Rule.

2) **Section 701.32 (b) and (c) – Payment on Shares by Public Unit and Nonmembers**

The maximum amount of all public unit and nonmember shares, allowed under this section, is the greater of 20% of total shares or \$1.5 million. Credit unions with a RegFlex designation are exempt from this provision of the Rule.

3) **Section 701.36(a), (b), and (c) – FCU Ownership of Fixed Assets**

The 5% limitation on fixed assets is eliminated for RegFlex credit unions; however, NCUA recommends that your credit union's Board of Directors establish a fixed asset limitation and incorporate it into your credit union's business plan.

Some restrictions on purchasing a building and leasing a portion of the property are also lifted; however, the credit union must plan to use the property for its own operation. The exemption does *not* grant long-term commercial leasing authorization. In addition, the credit union must comply with the conflict of interest provision of the Rule.

4) **Section 703.40(c)(6) – Investment and Deposit Activities – What general practices and procedures must I follow in conducting investment transactions?**

This Section limits delegation of discretionary control to third parties over the purchase and sale of investments to 100% of net capital. Credit unions eligible for RegFlex would be able to set their own limit. However, the limit must be approved by the Board and part of written policy.

5) **Section 703.90(c) – Investment and Deposit Activities – What must I do to monitor the risk of my securities?**

Under this Rule, if the total sum of complex securities exceeds net capital, quarterly stress testing (300 basis point shock) is required. For those credit unions who measure the impact of interest rate changes on their entire balance sheet as a part of ALM, this requirement is waived under RegFlex. NCUA recommends RegFlex credit unions continue to measure the impact of a sustained, parallel shift in interest rates of +/- 300 basis points on their entire balance sheet as part of their ALM program, at least quarterly. According to NCUA, "This exemption does not eliminate stress testing, rather it reduces duplicative reporting burden for those institutions that have a risk management process that measures the impact of interest rate changes on the entire balance sheet."

6) **Section 703.110(d) – Investment and Deposit Activities – What investments and investment activities are prohibited to me?**

Zero coupon investments are limited to those with a maturity date of less than 10 years from settlement date. This limitation would be removed for credit unions qualifying for RegFlex.

7) **Section 701.23 – Purchase, Sale, and Pledge of Eligible Obligations**

RegFlex credit unions receive additional authority under this Section. Credit unions can purchase any auto loan, credit card loan, mortgage loan, or member business loan from another federally insured credit union as long as the loans purchased are loan types the credit union is authorized to grant already. RegFlex credit unions are authorized to keep these loans in their portfolio. However, when purchasing eligible obligations from a liquidating credit union, total loans purchased cannot exceed 5% of the unimpaired capital and surplus of the purchasing credit union.

Once a RegFlex Credit Union, Not Always a RegFlex Credit Union

You can lose your eligibility for the RegFlex program if, at any time, your credit union no longer meets the criteria for the RegFlex designation. In addition, the NCUA Regional Director may revoke a credit union's RegFlex designation for substantive and documented safety and soundness issues. The Regional Director has the authority to revoke a credit union's total RegFlex authority or may revoke the RegFlex authority partially. If the Regional Director revokes part or all of a credit union's RegFlex authority, the Director must provide written notice to the credit union. If either of these two events occurs, the credit union must stop using the authority granted by the RegFlex program immediately.

Questions? Give us a call at (800) 288-0293 or email us at info@nearman.com.

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