

189—7.6(533) Receipt of secondary capital. A low-income designated credit union may offer secondary capital accounts to nonnatural person members and nonnatural person nonmembers, subject to the approval of the superintendent. Prior to offering secondary capital accounts, the board of directors must adopt a plan for the use of the funds and forward a copy to, and receive approval from, the superintendent.

7.6(1) Terms and conditions of a secondary capital account. A secondary capital account must be consistent with the following terms and conditions:

a. A secondary capital account contract agreement must be executed between an authorized representative of the account holder and the credit union, accurately disclosing the terms and conditions consistent with this subrule. A copy of the agreement must be retained by the credit union throughout the term of the agreement;

b. A secondary capital account must be established as a subordinated debt account and may not be pledged as security on any loan or other obligation with the credit union or any other party;

c. Funds in a secondary capital account must be subordinate to all other claims made upon the credit union, including those of shareholders, creditors and the National Credit Union Share Insurance Fund;

d. The stated maturity of a secondary capital account must be at least five years, may not be redeemed prior to its maturity, may be interest-bearing, and will not be eligible for insurance coverage by any governmental or private entity;

e. Funds in a secondary capital account must be made available to cover operating losses realized by the credit union which exceed the credit union's net available reserves and undivided earnings, exclusive of the allowance for loan and investment losses accounts. Losses are to be divided on a pro-rata basis among all secondary capital accounts held by a credit union at the time of the loss and, to the extent such funds are used, the credit union shall not restore or replenish the account; and

f. Upon the merger or other voluntary dissolution of a low-income designated credit union, except in the case of a merger with another low-income credit union, a secondary capital account held by the merging or dissolving credit union is to be closed and, to the extent not needed to cover losses as provided by this subrule, the funds in the account are to be paid out to the account holder.

7.6(2) Accounting treatment for secondary capital accounts. Funds in secondary capital accounts are to be recorded in the credit union books as a "secondary capital account." For accounts with remaining maturities of less than five years, the financial statements of the credit union must be footnoted to reflect a value of the accounts according to the following scale:

- a.* 4 or more years remaining maturity but less than 5 years—80 percent;
- b.* 3 or more years remaining maturity but less than 4 years—60 percent;
- c.* 2 or more years remaining maturity but less than 3 years—40 percent;
- d.* 1 year or more remaining maturity but less than 2 years—20 percent; and
- e.* Less than 1 year of remaining maturity—0 percent.