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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Chapter VII

Regulatory Reform Agenda

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: NCUA has established a Regulatory Reform Task Force (Task Force) to oversee the implementation of the agency's regulatory reform agenda. This is consistent with the spirit of President Trump's regulatory reform agenda and Executive Order 13777. Although NCUA, as an independent agency, is not required to comply with Executive Order 13777, the agency chooses to comply with its spirit and has reviewed all of NCUA's regulations to that end. The substance of the Task Force's initial report is provided in this notice. NCUA seeks public comment on the report and if any other regulatory changes should be made.

DATES: Comments must be received on or before November 20, 2017.

ADDRESSES: You may submit comments by any one of the following methods (Please send comments by one method only):

- **NCUA Web site:** <https://www.ncua.gov/about/pages/board-comments.aspx>.
- **Email:** Address to boardcomments@ncua.gov. Include "[Your name]—Comments on NCUA Regulatory Reform Agenda" in the email subject line.
- **Fax:** (703) 518–6319. Use the subject line described above for email.
- **Mail:** Address to Gerald Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- **Hand Delivery/Courier:** Same as mailing address.

Public Inspection: You can view all public comments on NCUA's Web site at <https://www.ncua.gov/about/pages/board-comments.aspx> as submitted, except for those we cannot post for

technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's headquarters at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an email to OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT:

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I. Background

a. NCUA's Regulatory Mission

NCUA, as a prudential safety and soundness regulator, is charged with protecting the safety and soundness of the credit union system and, in turn, the National Credit Union Share Insurance Fund (NCUSIF) and the taxpayer through regulation and supervision. NCUA's mission is to "provide, through regulation and supervision, a safe and sound credit union system, which promotes confidence in the national system of cooperative credit."¹ Consistent with that mission, NCUA has statutory responsibility for a wide variety of regulations that protect the credit union system, members, and the NCUSIF.

b. The Regulatory Reform Agenda

President Trump has established a regulatory reform agenda and issued multiple executive orders designed to alleviate unnecessary regulatory burdens. NCUA is not subject to these executive orders but has nonetheless

chosen to comply with them in spirit. Executive Order 13777, entitled "Enforcing the Regulatory Reform Agenda," directs subject agencies to establish Regulatory Task Forces and to evaluate existing regulations to identify those that should be repealed, replaced, or modified. The Executive Order requires subject agencies to, at a minimum, attempt to identify regulations that:

1. Eliminate jobs, or inhibit job creation;
2. Are outdated, unnecessary, or ineffective;
3. Impose costs that exceed benefits;
4. Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
5. Are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or
6. Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

II. This Notice—NCUA's Implementation of the Regulatory Reform Agenda

In complying with the spirit of Executive Order 13777, NCUA formed its Task Force in March 2017. The Task Force undertook an exhaustive review of NCUA's regulations and issued its first draft report to Chairman McWatters in May 2017 and submitted it without change to the NCUA Board in June 2017. This report outlines the Task Force's proposed review and reporting procedures and makes numerous recommendations for the amendment or repeal of regulatory requirements that the Task Force believes are outdated, ineffective, or excessively burdensome. The substance of the report is provided below. The report has been minimally modified from its original form to ensure readability and compliance with Federal Register publication requirements.

¹ <https://www.ncua.gov/About/Pages/Mission-and-Vision.aspx>.

III. The Task Force Report

a. Executive Summary

Executive Order 13777 requires agencies to appoint a Regulatory Reform Officer (RRO) and establish a Regulatory Reform Task Force (Task Force) to oversee the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Although NCUA is not required to comply with this Executive Order, the agency is choosing to comply with its spirit. From the end of March to the beginning of May, the Task Force met and reviewed all of NCUA's Regulations to determine how best to fulfill the aims of the Executive Order and decide what regulations could be eliminated, revised, improved, or clarified. This report contains the Task Force's initial findings and recommendations.

The Task Force has developed a comprehensive four-year agenda for reviewing and revising NCUA's Regulations. The regulations are broken into three tiers that cover the four-year scope. The Task Force approached this task with Executive Order's stated policy of "alleviat[ing] unnecessary regulatory burdens placed on the American people" and the strong philosophy of regulatory relief embraced by both the new administration and NCUA's Chairman in mind. As a result, the Task Force's recommendations eclipse the depth of changes previously proposed during NCUA's Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) and annual one-third regulatory review processes. For comparison purposes, this report also includes NCUA's 2016 EGRPRA report to Congress and the agency's regulatory review recommendations from 2014–2016. These attachments are not included in this **Federal Register** notice. Instead, they are available on NCUA's Web site at <https://www.ncua.gov/regulation-supervision/Pages/rules.aspx>.

The primary factors for evaluating the tiers were degree of impact and degree of effort, which are described in Section II of this report [section III.c of this **Federal Register** notice]. "Impact" is focused on the magnitude of the benefit that would result from the change, and how broadly the stakeholder community would be impacted. "Effort" considers how much time and energy would go into making the change. Additional consideration was also given to the need to connect or sequence certain changes together, efforts to change regulations that are already underway, and the

overall level of resources available to carry out this comprehensive approach.

Consistent with the spirit of the Executive Order, the Task Force recommends publishing in the **Federal Register**, with a 90 day comment period, a summary version of the Section III [III.d] regulations targeted for reform. This summary version would provide both a description of the regulations and the recommended actions. Publication will require an affirmative NCUA Board vote.

Going forward, the Task Force shall determine a mechanism for measuring progress in performing the tasks outlined in the Executive Order and report to the Board. The Task Force also recommends that in the second quarter of 2018, after NCUA has received and evaluated public comments on the summary version of Section III [III.d], the Task Force, upon consultation with the Board, provide the Board with a second report and a refined blueprint of the timeline for completing the specific amendments discussed in Tiers 2 and 3 of Section III [III.d] of this report. It is important to note that, while the report and refined blueprint will guide NCUA's actions moving forward, the process of implementing the amendments suggested in Tier 1 has already begun.

b. Introduction

Executive Order 13777 states that "it is the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people." It goes on to require that each Task Force created under this Executive Order "evaluate existing regulations [] and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law."

Executive Order 13777 requires agencies to appoint a Regulatory Reform Officer (RRO) and establish a Regulatory Reform Task Force (Task Force) to oversee the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Although NCUA is not required to comply with this Executive Order, the agency is choosing to comply with its spirit. Because NCUA is an independent agency, it does not have the structure of a cabinet department. Accordingly, the Task Force has tried to cohere the language of the Executive Order to NCUA's structure, as well as follow the timeline outlined in it.

On March 20, 2017, Chairman McWatters appointed General Counsel Michael McKenna as NCUA's

Regulatory Reform Officer and chair of the Regulatory Reform Task Force (Task Force). In addition, Chairman McWatters appointed to the Task Force the following: (1) Larry Fazio, Director, Examination & Insurance; (2) Ralph Monaco, Chief Economist; (3) Scott Hunt, Director, Office of National Examinations & Supervision; (4) Eugene Schied, Deputy Chief Financial Officer; and (5) Bob Foster, Director of Public and Congressional Affairs. General Counsel Michael McKenna added Special Counsel to the General Counsel Ross Kendall and Staff Attorney Tom Zells to the Task Force on March 21, 2017.

From the end of March to the beginning of May, the Task Force met and reviewed all of NCUA's Regulations to determine how best to fulfill the aims of the Executive Order and decide what regulations could be eliminated, revised, improved, or clarified. Section II [III.c] provides five general recommendations for complying with the spirit of the Executive Order. Section III [III.d] outlines those regulations the Task Force believes are ripe for reform. The current recommendations are the views of the Task Force; the Task Force has not yet consulted with the NCUA Board, other NCUA staff or sought the opinion of the credit union industry. Sections IV and V of this document contain the NCUA portion of the final EGRPRA report and NCUA's annual one-third regulatory reviews from 2014–2016. The Task Force's recommendations are generally consistent with that report and the regulatory reviews, but more fully embrace the regulatory relief philosophy of the current administration, the Chairman and Executive Order 13777, and should be used as guiding principles for the NCUA Board's regulatory reform initiatives moving forward.

c. General Recommendations

The NCUA Regulatory Reform Task Force recommends a comprehensive approach for eliminating, revising, improving, and clarifying NCUA's regulations over a four year period. The approach would examine all aspects of NCUA's regulations and embrace the strong philosophy of regulatory relief promoted by the new administration, NCUA's Chairman, and Executive Order 13777. The Task Force's recommendations propose greater and more significant regulatory relief amendments than have been embraced in the past. As such, this report makes recommendations that, while for the most part consistent with those articulated in NCUA's EGRPRA report

and annual one-third regulatory reviews, may not have been prescribed by those documents.

The general framework for this approach considers as primary factors both the “degree of effort” and “degree of impact” involved in amending each section of the existing regulations.

Additional consideration is also given to the need to connect or sequence certain changes together, efforts to change regulations that are already underway, and the overall level of resources available to carry out this comprehensive approach. All regulatory changes will require the affirmative vote of the NCUA Board.

The *primary factors* for assessing how to comprehensively approach the

review of NCUA regulations are defined as follows:

Degree of Effort: The degree of effort considers factors such as the length of time needed to make the change, the complexity of the change, the resources needed to make the change and the perceived contentiousness of the change. A lower degree of effort has relatively fewer of these characteristics than does a high degree of effort.

Degree of Impact: The degree of impact mostly considers the number of credit unions that would experience a benefit from the change. A low degree of impact classification does not mean that an amendment is unimportant.

The table on the following page arranges these two primary factors into

an effort/impact prioritization matrix. The purpose of the matrix is to guide agency efforts toward the actions that are expected to yield the greatest benefit relative to the degree of effort to make a particular change. The more immediate focus of the regulatory reform effort should emphasize changes that would require a relatively small effort in order to yield a large impact (benefit), as well as some changes with a significant impact that may require a higher degree of effort (the right side of the matrix). Changes that would fall on the left side of the matrix (lesser impact) will also be pursued in this comprehensive approach, but in many cases as a less immediate focus.

NCUA Regulatory Reform Task Force Effort/Impact Prioritization Matrix for Approaching Comprehensive Regulatory Review		
<div><div>(High)</div><div>↑</div><div>Degree of Effort</div><div>↓</div><div>(Low)</div></div>	Change requires high degree of effort to yield relatively low impact. These are viewed as lower priority and in need of further study/assessment.	Change requires high degree of effort, but may yield a high degree of impact. Some of these deserve immediate action.
	Change consists of relatively low effort, but also is believed to be of relatively low impact. Some of these may deserve immediate action, subject to resources.	Change is high impact and low effort. Potential quick regulatory relief for immediate action.
	(Low) ← Degree of Impact → (High)	

The Task Force’s initial prioritization of regulatory reforms is presented in Section III [III.d] of this document, which prioritizes the regulatory review into three tiers. As expressed in Section III [III.d], Tier 1 regulations provide the most important targets for reform and they should be amended in the first two years of this project. Tier 2 and Tier 3 regulations would be implemented in year three and year four respectively. The timeframe for Tier 2 and Tier 3 is

dependent on timely completion of Tier 1 and NCUA Board priorities. Tier 2 and Tier 3 regulations should be scheduled later because generally these will require more research and consensus on reform initiatives.

Consistent with the Executive Order, the Task Force recommends publishing in the **Federal Register**, with a 90 day comment period, a summary version of the Section III [III.d] regulations targeted for reform. This summary version would

include a description of the regulations and the recommended actions. Publication will require an affirmative NCUA Board vote. The Task Force also recommends a Board briefing at an open meeting to report on the substance of the comments received, as well as to report on the progress in reforming Tier 1 regulations.

The Task Force also recommends that in the second quarter of 2018, after NCUA has received and evaluated

public comments on the summary version of Section III [III.d], the Task Force, upon consultation with the Board, provide the Board with a refined blueprint of the timeline for completing the specific amendments discussed in Tiers 2 and 3 of Section III [III.d] of this report. It is important to note that, while the report and refined blueprint will guide NCUA's actions moving forward, the process of implementing the amendments suggested in Tier 1 has already begun. Despite this blueprint, NCUA Board future priorities may change over time with circumstances, so ongoing changes to the tiers can be expected.

In light of the comprehensive approach articulated by the Executive Order, the Task Force recommends suspending the Office of General Counsel's annual one-third review of NCUA's Regulations because the Task Force will have reviewed all of NCUA's Regulations as part of this project. The Task Force recommends that the one-third review be revived again in 2020.

The Task Force recommends that the offices of primary interest, the Office of General Counsel and the Office of Examination & Insurance take the lead in revising all regulations. This makes sense both because of the substantive expertise each office of primary interest will have for individual regulations and because the regular duties of both the General Counsel and the Director of E&I encompass the efforts that will be required in amending the regulations. The lead offices will also consult and engage other offices as needed.

Finally, the Task Force recommends the agency continue to coordinate with the other federal financial institution regulators to determine if there are any joint rulemakings that can be targeted for reform.

*d. Regulatory Recommendations and Proposed Timeline*²

As noted, Section III [III.d] details the specific regulations the Task Force identified as being ripe for reform initiatives and makes general recommendations about how each of the identified regulations should be amended and the timeline that should be followed. The Task Force's recommendations, as described in Section II [III.c], follow.

i. Tier 1 (First 24 Months)

1. § 701.21—Loans to Members and Lines of Credit to Members

Addresses: Loan maturity limits for federal credit unions.

Sections: 701.21(c)(4),(f), & (g).

Category: Clarify.

Degree of Effort: Moderate.

Degree of Impact: High.

Recommendation: Combine all the maturity limitations into one section. Current maturity limits are confusing because they are not all co-located. Also, incorporate the legal opinion with respect to modifications to make it clear a lending action (like a troubled debt restructuring) that does not meet the generally accepted accounting principles (GAAP) standard for a "new loan" is not subject to the maturity limits. In addition, consider providing longer maturity limits for 1–4 family real estate loans and other loans (such as home improvement and mobile home loans) permitted by 12 U.S.C. 1757(5)(A)(i) and (ii) and removing the "case-by-case" exception the NCUA Board can provide.

Addresses: Single borrower and group of associated borrowers limit.

Sections: 701.21(c)(5); 701.22(a) & (b)(5); 723.2 & 723.4(c).

Category: Clarify.

Degree of Effort: Low.

Degree of Impact: High.

Recommendation: Combine single borrower (and group of associated borrowers) limits into one provision. Currently these limits are interspersed in the general loan, loan participation and member business lending regulations. It would provide clarity and consistency to incorporate all references in one location.

Addresses: Third-party servicing of indirect vehicle loans.

Sections: 701.21(h).

Category: Remove.

Degree of Effort: Low.

Degree of Impact: Moderate.

Recommendation: Revise this section to eliminate the portfolio limits and related waiver provision. A single, comprehensive third-party due diligence regulation would address the minimum expectations for credit unions using any servicers.

2. § 701.21—Loans to Members and Lines of Credit to Members

Addresses: Compensation in connection with loans.

Sections: 701.21(c)(8).

Category: Clarify.

Degree of Effort: Low.

Degree of Impact: Moderate/High.

Recommendation: Modify to provide flexibility with respect to senior executive compensation plans that incorporate lending as part of a broad and balanced set of organizational goals and performance measures.

3. Appendix A to Part 701—Federal Credit Union Bylaws

Addresses: Federal Credit Union Bylaws.

Sections: Appendix A to Part 701.

Category: Improve.

Degree of Effort: High.

Degree of Impact: High.

Recommendation: Recommend using an ANPR and forming a working group to update the Bylaws. The Bylaws have not been significantly updated in nearly a decade and need to be modernized; the modernization is likely to be complex enough to require a working group approach.

4. Appendix B to Part 701—Chartering and Field of Membership Manual

Addresses: Field of Membership.

Sections: Appendix B to Part 701.

Category: Expand Authority.

Degree of Effort: Moderate.

Degree of Impact: Moderate.

Recommendation: Revise the chartering and field of membership rules to give applicants for community-charter approval, expansion or conversion the option, in lieu of a presumptive community, to submit a narrative to establish common interests or interaction among residents of the area it proposes to serve, thus qualifying the area as a well-defined local community. Add public hearings for determining well-defined local communities with populations over 2.5 million. Remove the population limit on a community consisting of a statistical area or a portion thereof. Finally, when such an area is subdivided into metropolitan divisions, permit a credit union to designate a portion of the area as its community without regard to division boundaries.³

5. Appendix B to Part 701—Chartering and Field of Membership Manual

Addresses: Emergency Mergers.

Sections: Appendix 1 to Appendix B to Part 701.

Category: Improve.

Degree of Effort: Moderate.

Degree of Impact: Moderate.⁴

Recommendation: Revise the definition of the term "in danger of insolvency" for emergency merger purposes to provide a standard that better protects the National Credit Union Share Insurance Fund (NCUSIF). First, for two of the three current net worth-based categories, extend the time period in which a credit union's net worth is projected to either render it

³ The timeline of this rule is subject to pending litigation.

⁴ Includes potential efficiencies and/or cost savings for NCUA.

² Recommendation Categories: Remove, Clarify, Simplify, Improve, Expand (Authority/Relief).

insolvent or drop below two percent from 24 to 30 months and from 12 to 18 months, respectively. Additionally, add a fourth category to the three existing net worth-based categories of the definition, to include credit unions that have been granted or received assistance under section 208 of the Federal Credit Union Act (FCU Act) within the last 15 months.

6. Part 702—Capital Adequacy

Addresses: Capital Planning and Stress Testing.

Sections: 702.501–702.506.

Category: Expand Relief.

Degree of Effort: Moderate.

Degree of Impact: Moderate.⁵

Recommendation: Explore raising the threshold for required stress testing to an amount greater than \$10 billion, and assigning responsibility for conducting stress testing to the credit unions.

7. Part 702—Capital Adequacy

Addresses: Risk-Based Capital (Delay).

Sections: 702.

Category: Improve.

Degree of Effort: Low.

Degree of Impact: High.⁶

Recommendation: Consider extending the January 1, 2019, implementation date to avoid needing to develop call report and system changes while this rule is under review. This will also allow time for the agency to more closely coincide changes with the implementation of the new expected credit loss accounting standard and consider any changes in risk-based capital standards for community banks currently being considered by the federal banking agencies.⁷ Considerations include changing the definition of complex to narrow the applicability of the rule, allowing for credit unions with high net worth ratios to be exempt, and simplifying the overall risk category and weighting scheme. (See also number 7 in Tier 2 discussion below.)

8. Part 704—Corporate Credit Unions

Addresses: Corporate Credit Unions.

Sections: 704.

Category: Improve.

Degree of Effort: Moderate.

Degree of Impact: Low.

Recommendation: Amend capital standards for corporate credit unions to

include expanding what constitutes Tier 1 Capital. For mergers, permit Tier 1 Capital to include GAAP Equity Acquired. Also, establish a retained earnings requirement of 2.50 percent, which, when achieved, will allow for all perpetual contributed capital to be included in Tier 1 Capital. The current rule for perpetual contributed capital would remain in effect until the retained earnings requirement is met.

9. Part 713—Fidelity Bond and Insurance Coverage

Addresses: Fidelity Bond and Insurance Coverage.

Sections: 713.

Category: Improve.

Degree of Effort: High.

Degree of Impact: High.⁸

Recommendation: Explore ways to implement the requirements of the FCU Act in the least costly way possible. While requiring fidelity coverage is an FCU Act requirement, NCUA's objective should be to allow a credit union to make a business decision based on their own product and service needs. This will effectively reduce NCUA's involvement in a credit union's operational decisions while maintaining the spirit of the FCU Act. This should be done separately from the Regulatory Reform Task Force.⁹

10. Part 715—Supervisory Committee Audits and Verification

Addresses: Engagement letter, target date of delivery.

Sections: 715.9(c)(6).

Category: Remove.

Degree of Effort: Low.

Degree of Impact: High.

Recommendation: Revise this section of the regulation to remove the specific “120 days from the date of calendar or fiscal year-end under audit (period covered)” reference from this section. Recommend the target date of the engagement letter be presented so the “credit union can meet the annual audit requirement.” This allows credit unions to negotiate the target date of delivery with the person or firm they contract with, but also ensures they meet the audit requirement per the FCU Act. This would also alleviate the need for a waiver.

11. Part 715—Supervisory Committee Audits and Verification

Addresses: Audit per Supervisory Committee Guide.

Sections: 715.7(c).

Category: Clarify.

⁸ Includes potential efficiencies and/or cost savings for NCUA.

⁹ The timeline of this rule is subject to pending litigation.

Degree of Effort: Moderate.

Degree of Impact: High.

Recommendation: Revise this to remove the reference to NCUA's Supervisory Committee Audit Guide. In its place, include minimum standards a supervisory committee audit would be required to meet if they do not obtain a CPA opinion audit.

12. Securitization

Addresses: Securitization.

Sections: 721.

Category: Expand Authority.

Degree of Effort: High.

Degree of Impact: Low.

Recommendation: Issue a legal opinion letter authorizing federal credit unions to issue and sell securities under their incidental powers authority. Also, finalize the safe harbor rule proposed in 2014 regarding the treatment by the NCUA Board, as liquidating agent or conservator of a federally insured credit union, of financial assets transferred by the credit union in connection with a securitization or a participation.

13. Part 722—Appraisals

Addresses: Appraisals.

Sections: 722.

Category: Expand Relief.

Degree of Effort: Moderate.

Degree of Impact: High.

Recommendation: NCUA should further explore issuing a rule to raise appraisal thresholds separately from the interagency process. In response to comments received through the EGRPRA process, NCUA joined with the other banking agencies to establish an interagency task force to consider whether changes in the appraisal threshold are warranted. The task force is now drafting a proposed rule to relieve certain appraisal burdens. In particular, the proposal would increase the appraisal threshold from \$250,000 to \$400,000 for “commercial real estate loans” where repayment is dependent primarily on the sale of real estate or rental income derived from the real estate. In contrast to the other agencies' appraisal regulations, NCUA's appraisal regulation does not currently distinguish, with respect to the appraisal threshold requirement, between different types of real estate secured loans. Under 12 CFR part 722, the dollar threshold for any real estate secured loan is \$250,000; loans above that amount must be supported by an appraisal performed by a state certified appraiser. The banking agencies' current appraisal regulations have the same \$250,000 threshold as NCUA's regulation for most real estate related loans, but also recognize a separate appraisal threshold of \$1 million for

⁵ Includes potential efficiencies and/or cost savings for NCUA.

⁶ Includes potential efficiencies and/or cost savings for NCUA.

⁷ CECL (current expected credit loss) is a new accounting standard adopted by the Financial Accounting Standards Board (FASB) affecting how credit unions account for losses and related reserves for financial instruments. The FASB effective date of CECL applicable to credit unions is 2021.

certain real estate related business loans that are not dependent on the sale of, or rental income derived from, real estate as the primary source of income (hereinafter, qualifying business loans). If NCUA joins the task force in issuing this joint proposed rule defining and raising the threshold for “commercial real estate loans,” the agency will likely also need to address the appraisal threshold for “qualifying business loans” in a subsequent rulemaking. Recommend that, instead of joining the joint proposed rule, NCUA further explore issuing a rule to raise both thresholds separately from the interagency process.¹⁰

14. Part 740—Accuracy of Advertising and Notice of Insured Status

Addresses: Accuracy of Advertising and Notice of Insured Status.

Sections: 740.

Category: Expand Relief.

Degree of Effort: Moderate.

Degree of Impact: High.

Recommendation: Revise certain provisions of NCUA’s advertising rule to provide regulatory relief to federally insured credit unions. The current draft NPRM proposes to allow federally insured credit unions to use a fourth version of the official advertising statement, “Insured by NCUA.” The draft also expands a current exemption from the advertising statement requirement regarding radio and television advertisements and eliminates the requirement to include the official advertising statement on statements of condition required to be published by law. Finally, it requests comment about whether the regulation should be modified to accommodate advertising via new types of social media, mobile banking, text messaging and other digital communication platforms, including Twitter and Instagram. Changes made based on this final request would need to be part of a separate rulemaking.

15. Part 741—Requirements for Insurance¹¹

Addresses: Conversion from, or termination of, Federal share insurance.

Sections: 741.4(j)(1)(ii).

Category: Improve.

Degree of Effort: Low.

Degree of Impact: Low.¹²

Recommendation: Revise this section of the regulation to preclude a credit

union that has already converted to another form of insurance from receiving a subsequently declared NCUSIF dividend. Currently, if a credit union terminates insurance before a premium is declared it does not pay, but if it terminates insurance before a dividend is declared but within the same calendar year it receives the dividend. This is unfair to credit unions that remain insured.

16. Supervisory Review Committee

Addresses: Supervisory Review Committee.

Sections: 746, Subpart A.

Category: Improve.

Degree of Effort: High.

Degree of Impact: Low.

Recommendation: Expand and formalize procedures by which federally insured credit unions may secure review of material supervisory determinations by NCUA’s Supervisory Review Committee (SRC). Broaden the jurisdiction of the SRC to more closely conform to the practices of the other federal financial institution regulatory agencies. Expand the pool of agency personnel who will serve on the SRC and implement an optional, intermediate level of review by the Director of NCUA’s Office of Examination and Insurance before a matter is considered by the SRC.

17. Appeals

Addresses: Appeals.

Sections: 746, Subpart B.

Category: Improve.

Degree of Effort: High.

Degree of Impact: Low.

Recommendation: Consolidate procedures currently imbedded in various substantive regulations by which parties affected by an adverse determination at the regional or program office level may appeal that determination to the NCUA Board. Exclude formal enforcement actions and certain other subject areas. Establish uniform procedural guidelines to govern appeals and provide an avenue by which appellants may request the opportunity to appear in person before the Board. Matters that are excluded from the proposed new rule either require a formal hearing on the record in accordance with the Administrative Procedure Act (e.g., formal enforcement actions and certain creditor claims in liquidation) or are already governed by separate, discrete procedures (e.g., enforcement measures under prompt corrective action or material supervisory determinations reviewable by the Supervisory Review Committee). Appeals of matters that are delegated by rule to an officer or position below the

Board for final, binding agency action are also excluded.

ii. Tier 2 (Year 3)

1. § 701.22—Loan Participations

Addresses: Establish a limit on the aggregate amount of loan participations that may be purchased from any one originating lender not to exceed the greater of \$5 million or 100 percent of the federally insured credit union’s net worth (unless waived).

Sections: 701.22(b)(5)(ii); 701.22(c).

Category: Remove.

Degree of Effort: Low.

Degree of Impact: High.

Recommendation: Remove the prescriptive limit on the aggregate amount of loan participations that may be purchased from one originating lender. Replace with a requirement the credit union establish a limit in their policy, and tie into proposed new universal standards for third-party due diligence with heightened standards if it exceeds 100 percent of net worth. Eliminates the need for the waiver provision in section 701.22(c).

2. § 701.23—Purchase, Sale, and Pledge of Eligible Obligations

Addresses: Purchase, sale, and pledge of eligible obligations.

Sections: 701.23.

Category: Clarify & Expand.

Degree of Effort: Moderate.

Degree of Impact: High.

Recommendation: Simplify and combine all the authority to purchase loans and other assets into one section, and provide full authority consistent with the FCU Act. Eligible obligations of the credit union’s members should have no limit. Remove CAMEL rating and other limitations not required by the FCU Act.¹³

3. § 741.8—Purchase of assets and assumption of liabilities

Addresses: Purchase of assets and assumption of liabilities.

Sections: 741.8.

Category: Improve.

Degree of Effort: Moderate.

Degree of Impact: Moderate.

Recommendation: Review this regulation to determine if NCUA approval is really needed in purchasing loans and assuming liabilities from market participants other than federally insured credit unions. Credit unions already have relatively broad authority to make loans, buy investments and other assets, and enter into transactions that create liabilities. Requiring NCUA approval in all cases (including

¹⁰ If NCUA decides to join the other agencies in issuing this joint proposed rule the timing will be subject to the interagency process.

¹¹ Also make technical corrections to the GAAP citations in 741.6(c).

¹² Includes potential efficiencies and/or cost savings for NCUA.

¹³ See 12 U.S.C. 1757(7)(E), 1757(13), and 1757(14).

transactions not material to the acquirer) is an inordinate burden for the institution and NCUA.

4. § 701.32—Payment on Shares by Public Units and Nonmembers

Addresses: Payment on shares by public units and nonmembers.

Sections: 701.32.

Category: Expand.

Degree of Effort: Low.

Degree of Impact: Moderate.

Recommendation: Raise the nonmember deposit limit from 20 percent to 50 percent. As the functional equivalent of borrowing, this will parallel the ability of credit unions to borrow from any source up to 50 percent of paid-in and unimpaired capital and surplus per section 1757(9) of the FCU Act. A credit union is required to be low-income designated to accept nonmember deposits, limiting the institutions that can engage in this activity.

5. § 701.34—Designation of Low Income Status; Acceptance of Secondary Capital Accounts by Low-Income Designated Credit Unions

Addresses: Designation of low income status; Acceptance of secondary capital accounts by low-income designated credit unions.

Sections: 701.34.

Category: Improve.

Degree of Effort: High.

Degree of Impact: Low.

Recommendation: See the January 2017 ANPR on Alternative Capital for the broad range of changes that need to be made to this regulation to relocate capital treatment to Part 702 and address securities law issues, issuance and redemption standards, etc.

6. § 701.38—Borrowed Funds From Natural Persons

Addresses: Borrowed funds from natural persons.

Sections: 701.38.

Category: Clarify/Expand.

Degree of Effort: High.

Degree of Impact: Moderate.

Recommendation: Recommend revising this section of the regulation to comprehensively address borrowing authority for federal credit unions. See the January 2017 ANPR on Alternative Capital for a discussion on this subject. Also, see recommended changes to Part 703. A comprehensive borrowing rule could provide clarity and certainty needed to support supplemental capital.

7. Part 702—Capital Adequacy

Addresses: Risk-Based Capital (Substantive Amendments).

Sections: 702.

Category: Improve.

Degree of Effort: High.

Degree of Impact: Low/Moderate.¹⁴

Recommendation: Considerations

include changing the definition of complex to narrow the applicability of the rule, allowing for credit unions with high net worth ratios to be exempt, and simplifying the overall risk category and weighting scheme. These amendments need to be coordinated with any amendments to supplemental and secondary capital, which need to be coordinated with any amendments to the borrowing rule.

8. Alternative Capital

Addresses: Alternative Capital.

Sections: 702 generally.

Category: Expand Authority.

Degree of Effort: High.

Degree of Impact: Low.

Recommendation: As a follow up to the ANPR issued in January 2017, the NCUA Board should consider whether to propose a rule on alternative forms of capital federally insured credit unions could use in meeting capital standards. First, the Board should decide whether to make changes to the secondary capital regulation for low-income designated credit unions. Second, the Board should decide whether or not to authorize credit unions to issue supplemental capital instruments that would only count towards the risk-based net worth requirement.

9. Part 703—Investment and Deposit Activities

Addresses: Investment and Deposit Activities.

Sections: 703.

Category: Improve & Expand.

Degree of Effort: High.

Degree of Impact: High.

Recommendation: Revise the regulation to remove unnecessary restrictions on investment authorities not required by the FCU Act, and provide a principles-based approach focused on governance for investing activity. Also, remove the pre-approval requirement for derivatives authority and substitute with a notice requirement (coheres this to Part 741 for federally insured, state-chartered credit unions as well). See the appendix for details on modifying this regulation.

10. § 701.21—Loans to Members and Lines of Credit to Members

Addresses: Put option purchases in managing increased interest-rate risk for real estate loans produced for sale on the secondary market.

Sections: 701.21(i).

Category: Clarify.

Degree of Effort: Low.

Degree of Impact: High.

Recommendation: Recommend

moving section 701.21(i) to Part 703 Subpart B—Derivatives Authority to have all options/derivatives authority in one section.

iii. Tier 3 (Year 4+)¹⁵

1. § TBD—Third-Party Due Diligence Requirements

Addresses: Third-party due diligence requirements.

Sections: TBD.

Category: Simplify & Improve.

Degree of Effort: Moderate.

Degree of Impact: High.

Recommendation: Add a comprehensive third-party due diligence regulation and remove and/or relocate such provisions from other regulations.

2. § 701.21—Loans to Members and Lines of Credit to Members

Addresses: Preemption of state laws

Sections: 701.21(b)

Category: Simplify & Improve

Degree of Effort: Moderate

Degree of Impact: High

Recommendation: Enhance Federal preemption where possible and appropriate. Federal credit unions that are multi-state lenders still are subject to a variety of state laws that create overlap and additional regulatory burden. Enhancing preemption where possible and appropriate may help reduce overlap and burden.

3. § 701.21—Loans to Members and Lines of Credit to Members

Addresses: Loan interest rate, temporary rate.

Sections: 701.21(c)(7)(ii).

Category: Expand/Clarify.

Degree of Effort: Moderate.

Degree of Impact: Low.¹⁶

Recommendation: Research the possibility of using a variable rate instead of a fixed, temporary rate. Also, remove the specific means for notifying credit unions to preserve future flexibility in sending notices in the most efficient and suitable manner available.

4. § 701.37—Treasury Tax and Loan Depositories and Financial Agents of the Government

Addresses: Treasury tax and loan depositories and financial agents of the Government.

Sections: 701.37.

¹⁵ These regulations will require more discussion on any potential changes.

¹⁶ Includes potential efficiencies and/or cost savings for NCUA.

¹⁴ Degree of impact depends on the approach.

- Category:* Remove/Improve.
Degree of Effort: Moderate.
Degree of Impact: Undetermined.
Recommendation: Determine if this regulation remains relevant and necessary.
5. Part 709—Involuntary Liquidation of Federal Credit Unions and Adjudication of Creditor Claims Involving Federally Insured Credit Unions in Liquidation
Addresses: Payout priorities in involuntary liquidation.
Sections: 709.5.
Category: Clarify.
Degree of Effort: Low.
Degree of Impact: Low.¹⁷
Recommendation: Revise the payout priorities to make unsecured creditors *pari passu* with the NCUSIF. Currently, unsecured creditors are senior to the NCUSIF.
6. Part 712—Credit Union Service Organizations (CUSOs)
Addresses: Credit Union Service Organizations (CUSOs).
Sections: 712.
Category: Remove & Expand.
Degree of Effort: Low.
Degree of Impact: High.
Recommendation: Recommend examining the CUSO regulation and evaluating the permissible activities in light of the FCU Act permitting CUSOs “whose business relates to the daily operations of the credit unions they serve”¹⁸ or that are “providing services which are associated with the routine operations of credit unions.”¹⁹
7. Part 714—Leasing
Addresses: Leasing.
Sections: 714.

- Category:* Improve.
Degree of Effort: Moderate.
Degree of Impact: Undetermined.
Recommendation: Review this regulation to identify if any changes or improvements are needed.
8. Part 725—National Credit Union Administration Central Liquidity Facility (CLF)
Addresses: National Credit Union Administration Central Liquidity Facility (CLF).
Sections: 725.
Category: Clarify.
Degree of Effort: Moderate.
Degree of Impact: Moderate.
Recommendation: Update this regulation to streamline, facilitate the use of correspondents, and reduce minimum collateral requirements for certain loans/collateral.
9. Part 741—Requirements for Insurance
Addresses: Maximum borrowing authority.
Sections: 741.2.
Category: Remove.
Degree of Effort: Low.
Degree of Impact: Low.
Recommendation: Remove the 50 percent borrowing limit for federally insured, state-chartered credit unions and the related waiver provision. State law should govern in this area.
10. Part 741—Requirements for Insurance
Addresses: Special reserve for nonconforming investments.
Sections: 741.3(a)(2).
Category: Remove.
Degree of Effort: Low.
Degree of Impact: Technical Amendment.

Recommendation: Remove as no longer necessary and not consistent with GAAP.²⁰

11. Part 748—Security Program, Report of Suspected Crimes, Suspicious Transactions, Catastrophic Acts, and Bank Secrecy Act Compliance

Addresses: Security Program, Report of Suspected Crimes, Suspicious Transactions, Catastrophic Acts, and Bank Secrecy Act Compliance.

Sections: 748.

Category: Improve.

Degree of Effort: Moderate.

Degree of Impact: High.

Recommendation: Review this regulation to identify if any changes or improvements are needed. Recommend using an ANPR and forming a working group due to the complexity.

12. Part 749—Records Preservation Program and Appendices—Record Retention Guidelines; Catastrophic Act Preparedness Guidelines

Addresses: Records Preservation Program and Appendices—Record Retention Guidelines; Catastrophic Act Preparedness Guidelines

Sections: 749

Category: Improve

Degree of Effort: Moderate

Degree of Impact: High

Recommendation: Review this regulation to identify if any changes or improvements are needed. Recommend using an ANPR and forming a working group due to the complexity.

- e. Appendix to Section III—Part 703 Recommendations Details

INVESTMENTS—PART 703 SUBPART A

Item	Change	Rationale
1. Investment Policies § 703.3	Fine tune section to focus on investment activities and not on balance sheet activities. E.g., remove (c) and (d), IRR and liquidity, since those items should be addressed in the IRR and liquidity policies.	Reduces burden on credit unions by not requiring IRR and liquidity policies in the investment policy. Also should help credit unions focus on balance sheet risk.
2. Discretionary Control Over Investments and Investment Advisor § 703.5(b)(1)(ii), § 703.5(b)(2)—(Net worth limit).	Remove 100 percent of net worth limit for delegated discretionary control. Would need to add language to ensure credit unions have provided investment advisors with investment guidelines that contain: Duration/average life targets, permissible investments, and investment limits.	This would allow credit unions to have professionally managed, separate-account, investments without imposing a limit. There are no limits on mutual funds where the credit union has less control of what the manager invests in. Separate-account delegated discretionary programs have considerably more transparency than mutual funds.
3. Discretionary Control Over Investments and Investment Advisor § 703.5(b)(3)—(Due diligence).	Remove prescriptive due diligence requirements and simply state the credit union must perform due diligence on the investment advisor.	This section is too prescriptive for a credit union to perform due diligence. It also does not focus on the investment advisor's ability to manage investments for the credit union.

¹⁷ Includes potential efficiencies and/or cost savings for NCUA.

¹⁸ 12 U.S.C. 1757(5)(D).

¹⁹ 12 U.S.C. 1757(7)(I).

²⁰ There are 11 federally insured, state-chartered credit unions from 8 different states that report a

total of \$4.4 million in this account on the Call Report as of December 31, 2016.

INVESTMENTS—PART 703 SUBPART A—Continued

Item	Change	Rationale
4. Credit Analysis § 703.6—(Due diligence)	Modify exception to credit analysis requirements to only securities guaranteed by the entities listed in the section.	This will make it clear that NCUA requires credit analysis for investments not guaranteed, but issued by, agencies. Currently the rule would not require a credit analysis for a Fannie Mae loss sharing bond or an unguaranteed subordinate tranche of a Freddie Mac multi-family mortgage security.
5. Credit Analysis § 703.6—(Maximum credit risk).	Require a minimum of investment grade for all investments.	Sets a minimum expectation of credit worthiness for all investments purchased under the Part 703 investment authority.
6. Credit Analysis § 703.6—(Credit union process and people).	A credit union, or its investment advisor, must have sufficient resources, knowledge, systems, and procedures to handle the risks and risk management (e.g. IRR modeling) of the investments it purchases.	This establishes the basic standard for a credit union to purchase an investment. This will allow for a loosening of Part 703 since NCUA has established standards to purchase investments that may have been prohibited or restricted in the past.
7. Broker-Dealers—§ 703.8(b)—(Due diligence)	Remove prescriptive due diligence requirements and simply state the credit union must perform due diligence on the broker-dealer.	This section is too prescriptive for a broker-dealer that doesn't provide advice. May want to specify standards for broker-dealers that provide advice to credit unions.
8. Monitoring Non-Security Investments § 703.10—(Reporting requirements).	Remove this section	Unduly prescriptive.
9. Valuing Securities § 703.11(a) & (d)—(Due diligence).	Combine sections and remove the reference to two price quotations. The requirement should be that the credit union use market inputs to determine if the purchase is at a reasonable market price.	Currently too prescriptive. A principled approach conforms more to market convention.
10. Valuing Securities § 703.11(c)—(Due diligence).	Remove this section	Unnecessary. This should be dictated by GAAP.
11. Monitoring Securities § 703.12(a)—(Reporting requirements).	Move to and combine with § 703.11	Streamlines Part 703.
12. Monitoring Securities § 703.12(b), (c) and (d)—(Reporting requirements).	Remove these sections and 703.12 (a) will be combined with Part 703.11.	Unduly prescriptive.
13. Permissible Investment Activities and Permissible Investments § 703.13 and § 703.14.	Merge these sections and add language from the FCU Act for permissible investments.	Streamlines rule and provides full investment authority allowed under the Act.
14. Permissible Investment Activities § 703.13(d) (Borrowing repurchase transactions).	Allow mismatch permissible in § 703.20 as the "base" permissible activity.	A 30 day mismatch is not very risky.
15. Permissible Investments § 703.14(a)—(Permissible indices for variable rate investments).	Expand permissible indices for credit unions that have sufficient resources, knowledge, systems, and procedures to handle the risks of the investment. Ability to model the investment for IRR should be required.	This could provide credit unions with investments that they could benefit from and not pose a risk to the NCUSIF.
16. Permissible Investments § 703.14(e)—(Municipal bond limits).	Remove limitations on municipal exposure	This limit is unnecessary. Credit unions should determine limits.
17. Permissible Investments § 703.14(h)—(Mortgage note repurchase transactions).	Limits will be reviewed to determine if they are appropriate.	Limits may need to be increased or eliminated.
18. Permissible Investments § 703.14(i)—(Zero coupon investment restrictions).	Remove limits on zero-coupon investments	Interest rate and liquidity risk should be managed from a balance sheet standpoint. This appears to try to manage it from an individual security standpoint. This limit is unnecessary.
19. Permissible Investments § 703.14(j)(3)—(Commercial mortgage related securities).	Remove this section	Not realistic in the current market place. Furthermore, having a large number of loans was actually a negative in many CMRS deals prior to 2007. Less attention was paid to the smaller loans that were poorly underwritten versus the larger loans in the deal.
20. Prohibited Investment Activities § 703.15—(Short Sales).	Review regulatory history on the prohibition of short sales.	Restriction may be reconsidered.
21. Prohibited Investments § 703.16(a)—(Mortgage servicing rights).	Determine if mortgage servicing rights (MSRs) are permissible for credit unions to purchase per the FCU Act. If so, there should be consideration given to permit the purchase of MSRs.	Buying MSRs from other credit unions may offer efficiencies in the credit union system.
22. Prohibited Investments § 703.16(b)—(Exchangeable, IO and PO MBS).	Remove this section	A credit union should be able to purchase interest-only and principal-only investments if it has sufficient resources, knowledge, systems, and procedures to handle the risks and risk management (e.g. IRR modeling) of the investments it purchases.

INVESTMENTS—PART 703 SUBPART A—Continued

Item	Change	Rationale
23. Grandfathered Investments § 703.18	Remove sections that will no longer apply based on other changes in the rule.	Some parts of the section may not apply due to other changes in the rule.
24. Investment Pilot Program § 703.19	Remove this section	Pilot programs will no longer be needed with the proposed changes.
25. Request for Additional Authority § 703.20 ...	Remove this section	Will no longer be needed with the removal or alignment of the restrictions in other sections.

DERIVATIVES—PART 703 SUBPART B AND RELATED ITEMS

Item	Change	Rationale
1. “Move” Put-option purchases in managing increased interest-rate risk for real estate loans produced for sale on the secondary market, in 701.21(i) to 703.102(a).	Move the product to the Subpart B permissible derivative products.	This would consolidate into one place all permissible derivative activities.
2. “Move” European financial options contract in 703.14(g) to 703.102(a).	Move the product to the Subpart B permissible derivative products.	This would consolidate into one place all permissible derivative activities.
3. “Rename” 703 Subpart B from “Derivatives Authority” to “Derivatives and Hedging Authority”.	Name change	Would widen the rule to address off balance sheet hedging instruments that are permissible.
4. “Move and Modify” Derivatives section in 703.14(k) to 703 Subpart B.	With the move, remove 703.14(k)(1), move 703.14(k)(2) to 703.100 and move 703.14(k)(3) to 703.102.	Would provide more clarity on hedging activities for TBA, Dollar Rolls, etc.
5. “Modify” Derivatives Application process to “Notification”.	Remove the FCU application requirements and replace with a “Notification”. This would require changes to § 703.108, § 703.109, § 703.110, § 703.111, § 703.112.	The “Notification” requirements would include providing NCUA with at least 60 day notice before initially engaging in a Derivative transaction.
6. “Remove” Derivatives Regulatory Limits	Remove the volume limits on derivatives activity. This would require changes to § 703.103, § 703.105, Appendix A.	Will be better supported as part of supervision guidance and possible use as scoping metrics.
7. “Expand” Eligible Collateral for Margining	Expand the eligible collateral in 703.104(a)(2)(iii) to include Agency Debt (Ginnie Mae Securities).	This is an acceptable practice and should have been in the Final Rule.
8. “Modify” Eligibility (only part)	Remove or change 703.108(b) to require notice but not pre-approval, and re-evaluate the CAMEL and asset size eligibility criteria.	Allows for more credit unions to use derivatives to manage interest rate risk subject to supervisory intervention if they are not equipped to manage it properly.
9. “Modify” Notification requirement for FISCUS	Change 741.219(b)	Make consistent with FCU notification requirements.
10. “Remove” Pilot Program Participants	Change 703.113	Not relevant anymore.

IV. Request for Comment

Executive Order 13777 requires that “each Regulatory Reform Task Force shall seek input and other assistance, as permitted by law, from entities significantly affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations.” In compliance with the spirit of the Executive Order, the Board seeks comments on all aspects of the Task Force’s report.

Commenters are also encouraged to discuss any other relevant issues they believe NCUA should consider with respect to reducing regulatory burden and fulfilling the aims of Executive Order 13777. The Board requests that, to the extent feasible, commenters provide documentation to support any recommendations.

By the National Credit Union Administration Board on August 15, 2017.

John H. Brolin,

Acting Board Secretary.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. FDA–2017–F–3717]

Juice Products Association; Filing of Food Additive Petition; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; petition for rulemaking; correction.

SUMMARY: The Food and Drug Administration (FDA or we) is correcting a notice that appeared in the **Federal Register** of Wednesday, July 26, 2017 (82 FR 34615). The document announced that we have filed a petition, submitted by the Juice Products Association, proposing that the food additive regulations be amended to replace the current Recommended Daily Intake (RDI) percentage values of calcium in fruit juices and fruit juice drinks in the regulation for vitamin D₃ with absolute values and to update the specifications for vitamin D₃. The document was published with incorrect information on the absolute level of added calcium for fruit juice drinks that are fortified with calcium. This document corrects that error.

DATES: This document is publishing in the **Federal Register** on August 22, 2017.