NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Chapter VII

Regulatory Reform Agenda

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of regulatory review.

SUMMARY: The 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 the president's regulatory reform agenda and Executive Order 13777. Although the NCUA, as an independent agency, is not required to comply with Executive Order 13777, the agency chose to comply with its spirit and reviewed all of the NCUA's regulations to that end. The Task Force published and sought comment on its first report in August 2017. Having reviewed all of the comments received, the Task Force is publishing its second and final report.

DATES: December 21, 2018.

ADDRESSES: Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Thomas I. Zells, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314 or telephone: (703) 548–2478.

SUPPLEMENTARY INFORMATION:

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I. Background

a. The NCUA's Regulatory Mission

The NCUA, as a prudential 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. The 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, the 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

The president has established a regulatory reform agenda and issued multiple executive orders designed to alleviate unnecessary regulatory burdens. The 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agencies to establish Regulatory Task Forces and to evaluate existing regulations to identify those that should be repealed, replaced, or modified.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.

c. This Document

The NCUA established a Regulatory Reform Task Force (Task Force) in March 2017 to oversee the implementation of the agency's regulatory reform agenda. This is consistent with the spirit of the president's regulatory reform agenda and Executive Order 13777. Although the NCUA, as an independent agency, is not required to comply with Executive Order 13777, the agency chose to comply with its spirit and reviewed all of the NCUA's regulations to that end. The Task Force undertook an exhaustive review of the 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. The first report outlined the Task Force's proposed review and reporting procedures and made numerous recommendations for the amendment or repeal of regulatory requirements that the Task Force believed to be outdated, ineffective, or excessively burdensome. On August 22, 2017 the NCUA published the substance of the Task Force's first report in the **Federal Register** and sought public comment.[2]

This document contains the Task Force's second and final report. As described more fully below, this report contains both general recommendations for the NCUA's regulatory reform agenda moving forward and a refined blueprint of the timeline for recommended regulatory changes. The NCUA began implementing Tier 1 of the regulatory reform agenda in May 2017. The agency aims to have commenced action on all Tier 1 recommendations by May 2019. The agency plans to initiate the implementation of Tier 2 and Tier 3 recommendations in May or June 2019 and 2020, respectively.

II. The Second Report

a. General Recommendations

i. Report Structure

The structure of this report closely tracks the structure of the first report. The Task Force has retained the effort/impact prioritization matrix used in the first report [3] and has tried to structure the notice as similarly as possible. Along with a consolidated refined blueprint of the timeline for future regulatory actions, this report includes a detailed refined blueprint that provides the first report's recommendations, a general summary of comments received on the recommendations, and this report's recommendations. The Task Force does not intend to respond to the specific substance of commenters' recommendations in this report. Instead, this report is largely focused on setting the procedures governing the regulatory reform agenda as it moves forward and providing the refined timeline for completing the Task Force's recommendations. Commenters' substantive recommendations, while considered in the development of this report and its refined timeline, will be most helpful in shaping recommended actions as they are more fully developed. Commenter recommendations related to completed actions have been reviewed by the Task Force and will be considered in future rulemakings unless otherwise indicated.

The NCUA will also separately publish a consolidated version of this report on the NCUA website. The

[1] *https://www.ncua.gov/About/Pages/Mission-and-Vision.aspx.*

[2] 82 FR 39702 (Aug. 22, 2017).

[3] *Id.* at 39704.

consolidated report will provide the Task Force's recommendations from the first report, the Task Force's updated recommendations, and the updated prioritizations.

ii. Measuring Future Progress

As contemplated by both Executive Order 13777 and the first report, the Task Force recommends that the NCUA measure the agency's progress as it advances through the regulatory reform agenda. To best do this, the Task Force recommends that the NCUA publish on its website the outline of this report's refined blueprint, subject to needed future modifications, to be updated every six months to monitor progress. This outline should document whether the agency has published any documents related to the individual recommendations and whether any changes to the recommendation or refined blueprint timeline have been made.

iii. The NCUA's Annual Regulatory Review

In the first report, the Task Force recommended suspending the NCUA Office of General Counsel's annual regulatory review until 2020. Approximately five commenters supported the temporary suspension. Several commenters opposed the suspension, noting that changes will likely occur between now and 2020, including to the NCUA Board composition. One of these commenters felt that the NCUA should maintain a formal mechanism for stakeholder insight into the effect of existing regulations on a contemporary basis and asked that the review be reinstated in January 2019 as Tier 1 is completed.

Based on commenter feedback, the Task Force has amended its recommendation. The Task Force recommends that the annual regulatory review resume in January 2019, via a notice published on the NCUA's website. The 2019 regulatory review will cover parts 700–710 of the NCUA's regulations. The Task Force believes the annual regulatory review plays an important role in giving stakeholders a continuing means of providing feedback as changes are made and take effect.

b. The Consolidated Refined Blueprint

REPORT 1 AND REPORT 2 PRIORITIZATION COMPARISON

Regulation	Report 2 priority	Report 1 priority	Justification for change
Report 2 Tier 1			
1. Corporate Credit Unions	Completed	Tier 1	N/A.
2. Emergency Mergers	Completed	Tier 1	N/A.
3. Securitization	Completed	Tier 1	N/A.
4. Supervisory Review Committee	Completed	Tier 1	N/A.
5. Appeals	Completed	Tier 1	N/A.
6. Equity Distribution	Completed	Tier 1	N/A.
7. Capital Planning and Stress Testing	Completed	Tier 1	N/A.
8. Advertising	Completed	Tier 1	N/A.
9. Field of Membership	Completed	Tier 1	N/A.
10. Risk-Based Capital Delay and Risk-Based Capital Substantive	Completed	Tier 1 Tier 2	The risk-based capital rule finalized in October 2018 addressed both the delay and substantive recommendations made in the first report.
11. FCU Bylaws	Proposed	Tier 1	N/A.
12. Payday Alternative Loans	Proposed	Not in Report	The Task Force believes the proposed change will provide additional regulatory relief.
13. Loans to Members: a. Loan Maturity Limits, b. Single borrower and Group of Associated Borrowers Limit.	Proposed	Tier 1	N/A.
14. Appraisals	Proposed	Tier 1	N/A.
15. Fidelity Bonds	Proposed	Tier 1	N/A.
16. Supervisory Committee Audits and Verification (Engagement Letter, Target Date of Delivery).	Tier 1	Tier 1	N/A.
17. Supervisory Committee Audits and Verification (Audit per Supervisory Committee Guide).	Tier 1	Tier 1	N/A.
18. Subordinated Debt (formerly Alternative Capital).	Tier 1	Tier 2	Subordinated debt (formerly alternative capital) is a priority for the Chairman, the agency, and commenters. As such, all recommendations associated with subordinated debt were moved to Tier 1.
19. Designation of Low Income Status; Acceptance of Secondary Capital Accounts by Low-Income Designated Credit Unions.	Tier 1	Tier 2	Subordinated debt (formerly alternative capital) is a priority for the Chairman, the agency, and commenters. As such, all recommendations associated with subordinated debt were moved to Tier 1.
20. Borrowed Funds from Natural Persons	Tier 1	Tier 2	Subordinated debt (formerly alternative capital) is a priority for the Chairman, the agency, and commenters. As such, all recommendations associated with subordinated debt were moved to Tier 1.
21. Payment on Shares by Public Units and Nonmembers.	Tier 1	Tier 2	Upon further consideration and in response to stakeholder feedback the Task Force has moved this recommendation from Tier 2 to Tier 1.
22. Compensation in Connection with Loans	Tier 1	Tier 1	N/A.

REPORT 1 AND REPORT 2 PRIORITIZATION COMPARISON—Continued

Regulation	Report 2 priority	Report 1 priority	Justification for change
23. CUSOs	Tier 1	Tier 3	The Task Force believes that this recommendation is appropriately placed in Tier 1. The change should be low effort and high impact.
24. Loan Interest Rate, Temporary Rate	Tier 1	Tier 3	The loan interest rate is a priority for the Board, the agency, and commenters.
Report 2 Tier 2			
1. Investment and Deposit Activities	Tier 2 (First Item)	Tier 2	Upon further consideration and in response to stakeholder feedback the Task Force has decided to move this item to the top of Tier 2.
2. Loan Participations	Tier 2	Tier 2	N/A.
3. Purchase, Sale, and Pledge of Eligible Obligations.	Tier 2	Tier 2	N/A.
4. Purchase of Assets and Assumption of Liabilities.	Tier 2	Tier 2	N/A.
5. Third-Party Due Diligence Requirements and	Tier 2	Tier 3	These recommendations were combined and put into Tier 2.
Third-Party Servicing of Indirect Vehicle Loans.	Tier 2	Tier 1	
6. Payout priorities in Involuntary Liquidation	Tier 2	Tier 3	This recommendation will help protect the NCUSIF and higher prioritization is appropriate.
Report 2 Tier 3			
1. Preemption of State Laws (Loans to Members and Lines of Credit to Members).	Tier 3	Tier 3	N/A.
2. Treasury Tax and Loan Depositaries and Financial Agents of the Government.	Tier 3	Tier 3	N/A.
3. Leasing	Tier 3	Tier 3	N/A.
4. Central Liquidity Facility	Tier 3	Tier 3	N/A.
5. Maximum Borrowing Authority	Tier 3	Tier 3	N/A.
6. Special Reserve for Nonconforming Investments.	Tier 3	Tier 3	N/A.
7. Security Program, Report of Suspected Crimes, Suspicious Transactions, Catastrophic Acts, and Bank Secrecy Act Compliance.	Tier 3	Tier 3	N/A.
8. Records Preservation Program and Appendices—Record Retention Guidelines; Catastrophic Act Preparedness Guidelines.	Tier 3	Tier 3	N/A.

c. The Detailed Refined Blueprint and Summary of Comments

As discussed, this report contains both a refined blueprint for the timeline for implementing the Task Force's recommendations and a summary of the comments the NCUA received on the first report. The NCUA received nearly 50 comments on the first report. Commenters overwhelmingly supported the NCUA's regulatory reform agenda. It should be noted that comment tallies are only reflective of the number of commenters who directly addressed a specific recommendation or issue. Many commenters expressed general support for the first report or for wide-ranging review of a number of regulations.

The NCUA has completed ten of the first report's initial regulatory relief recommendations:

1. Corporate Credit Unions;
2. Emergency Mergers;
3. Securitization;
4. Supervisory Review Committee;
5. Appeals Procedures;
6. The Equity Distribution;
7. Capital Planning and Stress Testing;
8. Accuracy of Advertising and Notice of Insured Status;
9. Field of Membership; and
10. Risk-Based Capital.

Additionally, the NCUA has issued proposed rules or commenced action for five other recommendations:

1. Bylaws;
2. Loan Maturities;
3. The Single Borrower or Group of Associated Borrower Limit;
4. Appraisals;
5. Fidelity Bonds.

Nearly all commenters explicitly commended the NCUA's efforts to identify outdated, ineffective, or excessively burdensome requirements and ease regulatory burden while modernizing the NCUA's regulations.

i. Tier 1 (First 24 Months)

1. Completed Actions

1. Part 704—Corporate Credit Unions

Addresses: Corporate Credit Unions.
Sections: 704.
Category: Improve.
Degree of Effort: Moderate.
Degree of Impact: Low.

Report 1: Amend capital standards for corporate credit unions to include expanding what constitutes Tier 1 Capital. For mergers, permit Tier 1 Capital to include generally accepted accounting principles (GAAP) equity acquired. Also, establish a retained earnings requirement of 2.50%, 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.

Comments: The NCUA issued this final rule in November 2017. However, a number of commenters either addressed the rulemaking or provided other substantive comments on part 704. Several commenters that submitted their comments prior to the November final rule's publication explicitly asked the NCUA to finalize the proposed rule. One of these commenters stated that the proposal provides corporate credit unions with greater flexibility in the calculation and treatment of capital and promotes increased certainty and stability in the credit union system. Several commenters agreed that expressly including merger-acquired GAAP equity as retained earnings would clarify that capital is available to cover losses, resulting in greater accounting transparency and reduced ambiguity. These commenters also supported counting perpetual contributed capital as Tier 1 Capital, especially given the confusion for credit union auditors evaluating potential perpetual contributed capital impairment. The commenters argued that the limitation of perpetual contributed capital for regulatory capital purposes undermines the full value of perpetual contributed capital to absorb losses during an economic event.

Approximately 15 commenters asked the NCUA to review part 704 in its entirety to explore modernization opportunities for the benefit of corporate credit unions and natural person members. The commenters argued that this would provide more relief by decreasing regulatory burden, increasing operational efficiency, and improving member services. One of these commenters stated that the NCUA revised part 704 as a result of the financial crisis and consequently the corporate system has significantly contracted and consolidated. Another commenter argued for more regulatory relief and refinement of the rules governing corporate credit unions, and recommended that the NCUA: (1) Form a task force with state regulators to review future adjustments to the corporate credit union rules; (2) reintroduce meaningful dual chartering by eliminating unnecessary preemption of state rules, particularly with respect to corporate credit union governance; and (3) enhance the joint supervision of corporates and their risk to natural person credit unions by formalizing increased information sharing between the NCUA and the state regulators supervising the corporate credit unions' natural person credit union members.

As discussed below, commenters also recommended a number of more specific substantive changes to part 704.

One commenter noted that, relative to credit risk management, the NCUA limits investments in any single obligor to the greater of 25% of total capital or $5 million. Section 704.6(c)(2) provides several exceptions to the single-obligor limit, including an exception for credit card master trust asset-backed securities that allows for a higher limit of 50% of total capital in any single obligor. The commenter stated that other asset-backed securities utilize the master trust structures such as vehicle, equipment, and student loan master trusts. The commenter opined that, like credit card master trusts, these other master trusts offer larger asset pools and greater borrower and geographic diversity. The commenter further noted that many offer structural features that enhance the safety of the investments. The commenter asked that, given the described advantages of master trust asset-backed securities, the NCUA consider including these additional master trust asset-backed securities in the exception allowing for investments up to 50% of capital.

One commenter asked the NCUA to examine the concept of Weighted Average Life (WAL) as a tool for risk mitigation of government-issued or guaranteed securities. The commenter noted that, per the current rule, a corporate credit union must manage its financial assets to maintain a WAL of 2 years or less to be measured at month-end in the base case, and 2.25 years or less to be measured at month-end in a 50% prepayment speed slowdown scenario. The commenter observed that under § 704.8(h) U.S. Government-issued or guaranteed securities are allowed a modest one-half WAL treatment. The commenter stated that government-guaranteed securities exhibit no credit risk, are highly liquid in the marketplace, serve as a buffer in economic stress scenarios, and are valuable collateral for liquidity in the capital markets and at the Federal Reserve Bank. The commenter argued that the one-half WAL treatment is not enough of a benefit or incentive for buying these securities. The commenter stated that they were not recommending that the NCUA Board revise the WAL measurement for credit-related securities, § 704.8(f) and (g), but did recommend the factor in § 704.8(h) be changed to make the WAL of government-issued and government-backed securities equal to a cash equivalent. The commenter asserted it is technically incorrect to assign WAL limits on government-guaranteed instruments.

One commenter noted that § 704.8 limits the WAL of corporate credit unions' financial assets and asserted that the NCUA's WAL thresholds for corporates were intentionally designed to limit a corporate's services to natural person credit unions to short-term liquidity lending and payments system services. The commenter recalled that the NCUA noted at the time that the WAL provision was essential in the absence of cash-flow mismatch test requirements. The commenter said that neither natural person credit unions nor other financial institutions have explicit limitations on the WAL of the asset side of their balance sheets.[4] The commenter conceded that, as the corporate system restructured in the aftermath of the corporate crisis, such regulatory shaping of the marketplace, and restrictions on corporate credit union growth and operations, were arguably necessary to contain risk. However, the commenter also argued that these same limitations restrict corporate credit union service to natural person credit unions, which in turn may be hindering the ability of some natural person credit unions to remain competitive in the marketplace. In addition to the WAL restrictions, the commenter noted that corporate credit unions are also limited to 180 days maturity on secured borrowings. The commenter contended that, taken together, the WAL and secured borrowing provisions limit corporates' ability to provide term lending and other liquidity management services to natural person credit unions. The commenter further observed that natural person credit unions have limited choices to find those essential services elsewhere, noting that the Federal Reserve discount window is generally a lender of last resort, and credit union membership in the Federal Home Loan Bank (FHLB) system may be more limited than commonly understood. The commenter concluded that, while the commenter and state regulators remain keenly aware of the severity of the corporate crisis and understand the importance of the lessons learned, the future of the corporate system cannot be solely controlled by a crisis mindset. The commenter also suggested the formation of a joint working group to help identify the proper regulatory balance.

Another commenter argued that a corporate credit union that has been granted Part 1 expanded authority should have more flexibility in the WAL requirement than base or base plus corporate credit unions. The commenter argued that since a Part 1 corporate has

[4] The commenter stated that ''[n]atural person credit union WAL of assets is factored into Prompt Corrective Action (PCA) net worth calculations, but are not limited by the PCA. See 12 CFR 702.105–107.''

a stronger developed infrastructure and higher capital requirements, such as a minimum leverage ratio of 6%, permission to increase the WAL in the base case and stressed scenario should be allowed. The commenter recommended the calculation be tiered to reflect a correlation to the required higher leverage ratios. The commenter said that, for example, a Part 1 corporate with: a 6% leverage ratio should be permitted to have a 2.5 year WAL in the base and 2.75 year WAL in the 50% slower prepayment scenario; a 7% leverage ratio should be permitted to have a 3.5 year WAL in the base and 4.0 year WAL in the 50% slower prepayment scenario; and an 8% leverage ratio should be permitted to have a 4.5 year WAL in the base and 5.0 year WAL in the 50% slower prepayment scenario. The commenter noted that Part 1 corporates are required to have more developed risk mitigation tools as part of their infrastructure in addition to stronger capital ratios. The commenter felt higher capital ratios are a good assessment of the safety and soundness of any financial institution and should correlate with the amount of risk a corporate should take. The commenter concluded that the additional regulatory flexibility within the WAL calculation is commensurate with the additional required capital and stronger infrastructure.

One commenter, a Part 1 corporate credit union, said that they would welcome the opportunity to expand their investment authority related to credit risk to correlate with the stronger capital position. The commenter would like to be able to buy investment grade subordinated secured asset-backed securities and would like parity with investment grade unsecured corporate debt, which is currently permitted under Part 1. The commenter argued parity would allow Part 1 corporates an investment opportunity that has the same credit rating and the same credit risk regardless of subordination. The commenter suggested subordinated investments within the secured asset-backed sector should be limited to only those sectors that are highly mature, such as credit cards, auto loans and FFELP-backed student loans. The commenter also asserted that a lower credit rating investment in these sectors is arguably less risky than the highest rating investment in a less mature, esoteric sector that does not have a proven track record through a business cycle.

The same commenter observed that part 704 has different definitions for credit risk for Part 1 versus base plus authorities. Specifically, the commenter noted that under Part 1 a purchase must be of ''investment grade'' whereas for base plus a purchase must only have a ''minimal amount of credit risk.'' The commenter pointed out that a distinction has been made for credit risk as it applies to Part 1 versus base plus, but the standard for investment action plans remains the same for both expanded authorities. The commenter stated that investment action plans are defined as required when the investment presents more than a minimal amount of credit risk. The commenter suggested this infers that an investment purchased under Part 1 as ''investment grade'' would be considered subject to an investment action plan immediately after purchase. The commenter did not believe this was the NCUA's intent and asked that this be clarified to remove any ambiguity.

Another commenter suggested that there should be a way for a corporate credit union to make a minimal investment in a company without the company being classified a corporate credit union service organization (CUSO). The commenter stated that many companies shun corporate credit union investment dollars due to the regulatory constraints of becoming a corporate CUSO, having to primarily serve credit unions and to follow the various regulatory restrictions of part 704. The commenter said that without the opportunity to invest in companies, a corporate credit union cannot direct or participate in the direction of new products or services. The commenter argued that the intent of an investment in such a company is not measured by a return as it is with traditional investments (securities) but instead is an opportunity to help bring new technologies, products, and services to credit union members.

One commenter requested that the NCUA make a technical correction. The commenter noted that changes to the member business lending rule caused references in § 704.7(e)(3) to § 723.1(b) and former § 723.16 to no longer be valid, leaving the rules for a loan to a member that is not a credit union or a corporate CUSO unclear.

Report 2: The NCUA issued a final rule related to the first report's recommendations in November 2017.[5] Part 704 is scheduled to be reviewed again as part of the Office of General Counsel's 2019 annual regulatory review.

2. 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.[6]

Report 1: Revise the definition of the term ''in danger of insolvency'' for emergency merger purposes to provide a standard that better protects the 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 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.

Comments: Approximately ten commenters offered support for the recommendations. Several commenters indicated the recommendation would make it easier for emergency mergers to occur and further protect the NCUSIF. One commenter said the recommended changes would allow the NCUA to better identify credit unions in danger of insolvency and give acquiring credit unions more time to step in and resolve troubled credit unions. Several commenters noted that, while they supported the increased flexibility, they objected to any regulatory regime that would result in rigid guidelines forcing credit union mergers. The commenters asked the NCUA to avoid any inflexible, one-size-fits-all rubric to resolve financially challenged institutions. One commenter felt the 208 assistance program had a poor track record in preventing credit union insolvency and urged the NCUA to explore ways to either improve the program's success rate or to seek more effective remedies to help struggling credit unions.

Report 2: The NCUA issued a final rule related to the first report's recommendations in December 2017.[7] No further action is being considered by the NCUA Board at this time. Part 701 is scheduled to be reviewed again as part of the Office of General Counsel's 2019 annual regulatory review.

3. Securitization

Addresses: Securitization.
Sections: 721.
Category: Expand Authority.
Degree of Effort: High.
Degree of Impact: Low.

[5] 82 FR 55497 (Nov. 22, 2017).

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

[7] 82 FR 60283 (Dec. 20, 2017).

Report 1: Issue a legal opinion letter authorizing federal credit unions (FCUs) 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 (FICU), of financial assets transferred by the credit union in connection with a securitization or a participation.

Comments: Approximately ten commenters offered general support for the recommendations. One commenter asked the NCUA to issue guidance to permit CUSOs to serve as aggregators of the mortgages underlying the securities. The commenter specifically reiterated the following points that it raised in a previously submitted letter: ''(1) Expand the eligibility of loans beyond those originated by the securitizing credit union, in particular, by permitting the use of purchased loans needed to complete a pool as well as allowing the aggregation of loans by CUSOs; (2) provide flexibility in the levels of residual and retained interests in securitized assets that a credit union may hold; (3) authorize credit unions to have special purpose vehicles with the authority to enter into derivative transactions; and (4) provide additional clarifications on the types of securitization transactions in which credit unions may engage.''

Several commenters requested new guidance as soon as possible. Another commenter urged the NCUA to work with the industry to develop guidance on an accelerated timeline. The commenter reasoned that building an effective securitization program takes time and investment in people and systems; thus, it is vital to have a clear understanding of any limitations on the type of activities a credit union can undertake. As part of this guidance, the commenter also suggested the NCUA set guidelines to allow well qualified credit unions, or their CUSOs, to serve as loan aggregators. The commenter felt that loan aggregation is a natural and necessary role within the financial services industry that should be extended to credit unions. Another commenter asked to work with the NCUA to develop the guidance through a working or advisory group established to allow credit unions and securitization experts to help identify key issues and concerns.

Report 2: The NCUA implemented the first report's recommendations through its June 2017 safe harbor final rule,[8] and its June 21, 2017 legal opinion letter regarding the authority to issue and sell securities.[9] Additionally, the Office of Examination and Insurance is currently developing guidance on asset securitization for credit unions. The NCUA is also evaluating whether any additional regulation, guidance, or supervision will be necessary.

4. Supervisory Review Committee

Addresses: Supervisory Review Committee.
Sections: 746, Subpart A.
Category: Improve.
Degree of Effort: High.
Degree of Impact: Low.

Report 1: Expand and formalize procedures by which FICUs may secure review of material supervisory determinations by the 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 the NCUA's Office of Examination and Insurance before a matter is considered by the SRC.

Comments: Approximately five commenters offered specific support for the recommendations. One commenter commended the SRC reforms and the NCUA's commitment to consider including appeals information in the agency's Annual Report. Another commenter supported the final rule, but still desired additional improvements that were not finalized, such as consistent review panels and review of CAMEL 1 and 2 component scores. Several other commenters expressed appreciation for the NCUA's willingness to provide several opportunities for review of material supervisory determinations from a program office. These commenters welcomed the additions of the intermediate SRC and the opportunity for oral argument before the NCUA Board directly. However, these commenters did contend that, given the nature of the regulator/regulated relationship, an independent review option should also be available. Further, the commenters felt the rule should allow for a request for oral hearing up until the final disposition, reasoning that as a credit union works through a complaint it may determine an oral hearing is appropriate and it should be able to request one up until an appeal decision is made.

Report 2: The NCUA issued a final rule related to the first report's recommendations in October 2017.[10] No further action is being considered by the NCUA Board at this time. Part 746 is scheduled to be reviewed again as part of the Office of General Counsel's 2020 annual regulatory review.

5. Appeals

Addresses: Appeals.
Sections: 746, Subpart B.
Category: Improve.
Degree of Effort: High.
Degree of Impact: Low.

Report 1: 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 NCUA 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 SRC). Appeals of matters that are delegated by rule to an officer or position below the NCUA Board for final, binding agency action are also excluded.

Comments: Approximately ten commenters offered general support for the recommendations. One of these commenters commended the reforms and the NCUA's commitment to considering the inclusion of appeals information in the agency's Annual Report. Another commenter strongly supported the consolidation and improvement of procedures regarding appeals of adverse determinations. The NCUA does not have direct supervisory authority over CUSOs; however, one commenter said that the NCUA's exercise of *de facto* supervision over CUSOs means CUSOs should also have the ability to appeal adverse determinations made by NCUA examiners through the CUSO review process.

A handful of the supportive commenters noted that they appreciate the improved process, but felt the agency should provide a mechanism for

[8] 82 FR 29699 (June 30, 2017).

[9] Asset Securitization Authority, NCUA OGC Op. Ltr. 17–0670 (June 21, 2017), *available at https://www.ncua.gov/regulation-supervision/Pages/rules/legal-opinions/2017/asset-securitization-authority.pdf.*

[10] 82 FR 50270 (Oct. 30, 2017).

collection of exam feedback on the performance of individual examiners. These commenters argued that independent, ongoing, and confidential surveys should be processed and compiled by an external third party, free from public repercussion. The commenters felt that such a process would be advantageous for the NCUA by demonstrating education, training, and consistency metrics, as well as assisting in the merit pay process. The commenters said that most industries have successfully implemented client satisfaction methodologies to support data-driven decision making. Finally, one commenter supported this measure, but asked for reconsideration of additional changes, including expedited appeals when time is of the essence.

Report 2: The NCUA issued a final rule related to the first report's recommendations in October 2017.[11] No further action is being considered by the NCUA Board at this time. Part 746 is scheduled to be reviewed again as part of the Office of General Counsel's 2020 annual regulatory review.

6. Part 741—Requirements for Insurance

Addresses: National Credit Union Share Insurance Fund Equity Distributions.
Sections: 741.4; 741.13.
Category: Improve.
Degree of Effort: Low.
Degree of Impact: High.
Report 1: 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.

Comments: A handful of commenters specifically supported the recommendation. Two of these commenters expected the same principles to be applied to 2018 Temporary Corporate Credit Union Stabilization Fund rebates. A third commenter strongly supported the recommendation, noting that the bright line proposed seems fairer to FICUs than the practice in existence at the time of the comment. The commenter emphasized that it is inherently inequitable to let credit unions terminate insurance coverage mid-year, and thereby avoid the risks of a premium assessment or capitalization deposit increase for the remaining months of that year, and still reward them with equity distributions at year-end. That practice, the commenter argued, disadvantages FICUs that remain insured throughout the calendar year and bear the risks others may avoid. The commenter also felt that FICUs considering terminating federal share insurance coverage should factor the risk of missing out on a year-end equity distribution into their decision.

Conversely, a handful of commenters opposed the recommendation. One commenter asked the NCUA to apportion any potential distributions based on the total amount of assessments paid by the FICU and suggested a FICU's proportionate share of a future equity distribution be determined by measuring the average of its four quarter-end insured share balances reported during the year applicable to the distribution. Several of the commenters reiterated concerns they had previously raised during the equity distribution method comment period. One of these commenters strongly urged the NCUA to forego any efforts related to this provision. The commenter felt that it is unclear how this provision would impact future equity distributions as they relate to the Corporate Resolution Program. The commenter noted that, at the time of the comment, if a FICU terminates federal share insurance coverage during the calendar year the credit union is entitled to receive an equity distribution, which is based on the insured shares as of the last day of the most recently ended reporting period and then reduced by the number of months remaining in the calendar year. The commenter applauded the simple and fair logic of that approach. Finally, another commenter reiterated objections to changes to § 741.4 that would deprive a credit union of a pro rata NCUSIF dividend share for a year in which that credit union was NCUSIF insured for at least part of the year.

Separately, several commenters argued that the NCUSIF's normal operating level can and should return to its historical 1.30% over the next several years. The commenters felt that, as the regulatory reform agenda moves forward in eliminating duplicative and outdated compliance burdens, continued stability will further ameliorate additional concerns regarding the NCUSIF's normal operating level. Another commenter expressed continued concern over the 1.39% normal operating level, arguing the increase is significant deviation from the NCUA's proven, successful policy. The commenter urged the NCUA to re-evaluate the normal operating level and to set it at 1.34% for a temporary period, followed by a return to the traditional 1.30% level. The commenter said that this historical policy dictated that the NCUSIF's equity ratio would be countercyclical, rising in good times so that premiums would not be necessary at the troughs of a recession.

Report 2: The NCUA issued a final rule related to the first report's recommendations in February 2018.[12] Under the final rule, a financial institution must file at least one quarterly Call Report within the current calendar year to be eligible to receive an NCUSIF equity distribution. This requirement applies to all potential beneficiaries of an NCUSIF equity distribution including FICUs that terminate federal share insurance coverage through conversion, merger, or liquidation. No further action is being considered by the NCUA Board at this time. Part 741 is scheduled to be reviewed again as part of the Office of General Counsel's 2020 annual regulatory review.

7. 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.[13]
Report 1: 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.

Comments: Several commenters offered general support for the recommendations. Commenters' substantive recommendations focused on narrowing the rule's applicability. Several commenters suggested raising the threshold to a significantly higher value, reasoning that since most credit unions are well under the $10 billion threshold currently, but have room to grow, a higher threshold would better reflect macroeconomic realities than an inflexible dollar amount. These commenters also argued that large credit unions are best equipped to internally self-conduct these exercises, with reports to examiners, given that, unlike the banking agencies, NCUA staff are not consistently involved in large institution contingency exercises. One commenter asked the NCUA to consider Congressional efforts to raise the bank stress testing threshold to $250 billion. Several other commenters argued that,

[11] 82 FR 50288 (Oct. 30, 2017).

[12] 83 FR 7954 (Feb. 23, 2018).

[13] Includes potential efficiencies and/or cost savings for NCUA.

given research indicating that the asset size of an institution is insufficient to determine riskiness, the proposal should be expanded to provide relief for more credit unions.[14] One commenter argued that stress testing has become overly burdensome and has added unnecessary cost to the NCUA and affected credit unions, particularly considering the overall financial strength of the credit unions impacted by the rule.

Report 2: On April 25, 2018, the NCUA issued a final rule [15] amending its stress testing regulations, which, among other things, raised the threshold for required stress testing to a minimum of $15 billion, and assigned responsibility for conducting stress testing to covered credit unions. No further action is being considered by the NCUA Board at this time. Part 702 is scheduled to be reviewed again as part of the Office of General Counsel's 2019 annual regulatory review.

8. 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.
Report 1: Revise certain provisions of the NCUA's advertising rule to provide regulatory relief to FICUs. The current draft NPRM proposes to allow FICUs 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.

Comments: Approximately ten commenters generally supported the recommendations and an increased parity with banks. Approximately five commenters specifically supported expanding the radio/television exemption to 30 seconds. Several commenters supported eliminating the requirement for the advertising statement on statements of conditions. Approximately five commenters specifically supported updates to the rule to accommodate social media and urged that any new or modified rules should ensure credit unions retain maximum flexibility and the ability to take advantage of new technologies. Several commenters specifically supported the fourth version of the advertising statement.

One commenter asked the NCUA to take steps to emphasize that part 740 preempts state advertising restrictions for FCUs and federally insured, state-chartered credit unions (FISCUs). The commenter said that, for example, at a minimum, any modifications to these rules should retain the first sentence of part 740: ''[T]his part applies to all federally insured credit unions.'' The commenter further added that additional revisions to bolster the preemptive force of part 740 could provide additional clarity for both FCUs and FISCUs and ensure that all credit unions operate under fair and consistent advertising rules.

One commenter suggested that the final rule should be much more expansive. Several commenters emphasized that this rule is a priority to them. One of these commenters asked the NCUA to make the fourth advertising statement and the 30 second exemption effective immediately following the proposed rule's comment closing date.

One commenter found the changes unneeded, reasoning that saving a few characters on social media is a non-issue and not worthy of Tier 1 status, especially since Twitter doubled its character limits.

Report 2: The NCUA issued a final rule related to the first report's recommendations in April 2018.[16] No further action is being considered by the NCUA Board at this time. Part 740 is scheduled to be reviewed again as part of the Office of General Counsel's 2020 annual regulatory review.

9. 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.
Report 1: 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.

Comments: Approximately ten commenters offered general support for the proposal. Several commenters opposed the public hearing requirement for determining well-defined local communities with populations over 2.5 million. One of these commenters felt that while such hearings may be warranted in the case of a narrative application, the requirement seemed capricious in the case of a well-defined presumptive community application based on a Combined Statistical Area or Metropolitan Statistical Area. Another of these commenters felt this is a technical legal issue for which public input is neither necessary nor appropriate. A handful of commenters supported removing the population limit on a community consisting of a statistical area or a portion thereof. One of these commenters said that the NCUA should approve field of membership requests based on the FCU's demonstrated ability to serve members within a community, regardless of population, rather than on an arbitrary cap. At least one commenter supported allowing designation of a portion of a statistical area as a community without regard to metropolitan division boundaries. Another commenter asked the NCUA to consider additional improvements, including: Deadlines for FOM amendment requests, increased transparency in the decision making process, and streamlined charter conversions and notification requirements.

Report 2: The NCUA issued a final rule related to the first report's recommendations in June 2018.[17] Specifically, the final rule allows the option for an applicant to submit a narrative to establish the existence of a well-defined local community instead of limiting the applicant to a presumptive statistical community. Also, the NCUA Board will hold a public hearing for narrative applications where the

[14] The commenters cited recent proposals by federal banking regulators and the Office of Financial Research's report, ''Size Alone is not Sufficient to Identify Systemically Important Banks,'' to support their position.

[15] 83 FR 17901 (Apr. 25, 2018).

[16] 83 FR 17910 (Apr. 25, 2018).

[17] 83 FR 30289 (June 28, 2018).

proposed community exceeds a population of 2.5 million people. Further, for communities that are subdivided into metropolitan divisions, the NCUA Board will permit an applicant to designate a portion of the area as its community without regard to division boundaries. The NCUA Board expressly declined to increase the population limit for presumptive statistical communities. The final rule became effective September 1, 2018.[18] Part 701 is scheduled to be reviewed again as part of the Office of General Counsel's 2019 annual regulatory review.

10. Part 702—Capital Adequacy

Addresses: Risk-Based Capital.
Sections: 702.
Category: Improve.
Degree of Effort: Low.
Degree of Impact: High.[19]
Report 1 (Delay): 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 current expected credit loss (CECL) accounting standard and consider any changes in risk-based capital standards for community banks currently being considered by the federal banking agencies.[20] 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.

Report 1 (Substantive): 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.

Comments: Approximately 15 commenters offered comments supporting delay of the RBC rule. Several commenters specifically supported delaying implementation of the rule so that the NCUA can revisit the need for it as adopted.

Approximately five commenters cited the concurrent timeline for implementation of the new CECL standard as a factor necessitating delay. One of these commenters reasoned that aligning these dates would provide additional time for capital planning and, to the degree deemed appropriate, potential alignment with community bank capital standards. The commenter felt such a delay would be high impact and low effort and consistent with Executive Order 13777's spirit. Another commenter asked that the NCUA provide to credit unions any economic analysis it has conducted on the impact of the CECL standard, which the commenter believed will likely compound compliance issues for RBC covered credit unions when it takes effect.

Approximately ten commenters cited system integration and call report update issues as factors necessitating delay. Several of these commenters said that compliance requirements have not been adequately noticed to provide system integration updates. Another commenter emphasized that without delay credit unions will be challenged to make required call report and system changes as the rule remains under review. One commenter stated that internal adjustments and implementation of new call report instructions take considerable resources with each change. The commenter felt that delaying the effective date and preventing a series of smaller and possibly conflicting changes that need to be readjusted over the next year will save credit unions time and resources. Several commenters said that delay and further study should be one of the agency's highest priorities. The commenters reasoned that, given the January 2019 effective date, credit unions must begin planning for and altering operations as early as the second quarter of 2018 and strongly urged the NCUA to announce a delay as soon as possible. The commenters stressed that the longer the NCUA waits to delay the rule, the higher the likelihood that credit union operations will be affected. Another commenter said that delay is necessary to give credit unions more time to review the rule and to give the NCUA more time to develop the necessary call report changes. The commenter suggested the call report should be modernized to reduce reporting burdens and give regulators better tools for on-site exams and off-site monitoring.

Approximately ten commenters asked the NCUA to narrowly tailor and simplify the rule. Approximately five commenters specifically asked the NCUA to narrow the complex credit union definition. Approximately five commenters specifically supported reducing the applicability of RBC and risk-weights to all smaller credit unions. Another commenter asked that, if the rule is retained, the NCUA further consider the rule's scope and a complex credit union definition that is not so dependent on asset size. One commenter asked the NCUA to raise the threshold to at least $500 million. The commenter reasoned that the RBC requirements are supposed to give larger institutions greater flexibility while appropriately addressing system risk posed by larger institutions, goals the commenter does not believe a $100 million threshold satisfies.

Approximately five commenters suggested the NCUA simplify the overall risk category and weighting scheme. Another commenter asked the NCUA to revisit the rule in light of the other federal banking agencies' current review of simplified capital standards for community banks.

Approximately five commenters asked the NCUA to exempt credit unions with high net worth ratios. One of these commenters asked the NCUA to study further whether RBC requirements should be applied to natural person credit unions and whether credit unions with high net worth ratios should be exempt from the RBC requirements. Another of these commenters suggested that the NCUA could implement an ''off-ramp'' from RBC requirements for well-capitalized credit unions similar to the CHOICE Act provision.[21] Approximately five commenters stressed that RBC requirements should be narrowly tailored to capture only the appropriate risk profiles intended. The commenters said that credit unions are unique and vary in terms of asset class, lending activities, and membership fields and cautioned against a one-size-fits-all approach or methodology that would subject credit unions to undue regulatory burden that fails to appropriately address their activities.

Approximately five commenters, in addressing the RBC recommendations, said that supplemental capital should be permitted to count towards credit unions' RBC requirements, to the extent they must be met. One of these commenters asked that, if the NCUA's 2015 RBC final rule is revised or retained instead of repealed, alternative

[18] The NCUA has appealed the U.S. District Court for the District of Columbia's ruling on the October 2016 field of membership rule.

[19] Includes potential efficiencies and/or cost savings for NCUA.

[20] 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.

[21] Financial CHOICE Act of 2017, H.R. 10, 115th Cong. (2017).

capital authority be provided to help covered credit unions meet the new RBC requirements. Another commenter stated that, regardless of any RBC delay, the alternative capital rulemaking should proceed now under Tier 1. The commenter said that the rulemaking is especially necessary because credit unions will need time to plan for and adopt new alternative capital options so they can manage their balance sheets prior to any RBC effective date.

Several commenters asked the NCUA to adjust its RBC standards to accommodate the credit union model as opposed to the banking model, which the standards are based on. One of these commenters suggested that the NCUA should review European standards which take into account the cooperative model. The commenter suggested that, if the NCUA lacks the authority to make these changes, it should request such authority from Congress.

One commenter provided a substantial comment arguing that the NCUA should incorporate the findings and actions of other federal banking agencies. The commenter cited a previous letter sent to the NCUA noting that the federal banking agencies issued a joint proposal to reduce regulatory burden by simplifying capital rules. The commenter said that the banking agencies proposed, in part, to simplify the threshold deduction for mortgage servicing assets (MSAs). The commenter stated that this would include raising the limit for MSAs from 10% of common equity tier I capital to 25%, where any MSAs that exceed that limit would be deducted from regulatory capital. The commenter felt that, while the federal banking agencies' proposal would maintain MSA risk weight at 250%, this move clearly demonstrates the commitment to reduce regulatory capital burdens. The commenter said that the NCUA could take comparable measures to ease capital requirements, such as a reduced risk-weighting for MSAs and CUSOs, as well as the disparate weighting of mortgages based on concentration.

Another commenter asked the NCUA to discard the 2015 RBC final rule and return to the previous one because the prior form of RBC is consistent with prompt corrective action (PCA) requirements under the FCU Act. The commenter also noted, however, that bank regulators are increasingly wary of RBC and some economists doubt its usefulness. The commenter cited a 2013 Mercatus Center study that the commenter said concluded that RBC is not an effective predictor of bank performance. The commenter also asked the NCUA to reconsider whether a higher RBC requirement for well-capitalized credit unions, compared to the one for adequately-capitalized credit unions, is justified given the language of the FCU Act under PCA, which the commenter believed conclusively precludes this result.

At least ten commenters specifically suggested that substantive amendments to RBC are a priority. One commenter stated that Tier 2 prioritization for substantive changes was acceptable, provided the NCUA delay RBC's implementation by at least 24-months. Another commenter recommended that the NCUA classify the Task Force recommendations as Tier 1 and accelerate the process to provide meaningful regulatory relief as soon as possible. Several commenters said that reconsideration of many aspects of the RBC rule should be a top priority.

Report 2: After careful consideration and review, the NCUA issued a final rule related to the first report's recommendations in October 2018.[22] The final rule delayed the effective date of the RBC rule until January 1, 2020, and amended the definition of ''complex'' credit union for risk-based capital purposes, resulting in an increase in the asset threshold from $100 million to $500 million. Part 702 is scheduled to be reviewed again as part of the Office of General Counsel's 2019 annual regulatory review.

2. Proposed Actions

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

Addresses: FCU Bylaws.
Sections: Appendix A to Part 701.
Category: Improve.
Degree of Effort: High.
Degree of Impact: High.
Report 1: Recommend using an advance notice of proposed rulemaking (ANPR) and forming a working group to update the FCU bylaws. The FCU 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.

Comments: Approximately five commenters offered general support for the recommendation. Several other commenters stated that bylaws should be optional, with credit unions permitted to use their own bylaws. Those commenters cautioned that the NCUA should not impose new and additional regulatory compliance or reporting burdens. One supportive commenter noted its previous calls for the NCUA to issue a proposed rulemaking or ANPR to implement the 2014 FCU Bylaws working group's recommendations, including amending the required number of members needed on matters relating to special meetings and board nominations. Another commenter felt that NCUA's prior approval of all bylaw changes is unnecessary when an after the fact notice to the region should suffice, particularly for changes already approved for other credit unions. The commenter also believed that sanctions for failure to comply with bylaws are overly harsh and unnecessary for most credit unions. One commenter specifically argued that Articles III and IV on member meetings and elections are overly prescriptive and need to be revisited with an eye toward facilitating governance procedures.

Report 2: The NCUA issued a bylaws ANPR in March 2018[23] and a proposed rule with a request for comment in October 2018.[24]

12. § 701.21—Loans to members and lines of credit to members

Addresses: Payday Alternative Loans (PALs).
Sections: 701.21(c)(7).
Category: Improve.
Degree of Effort: High.
Degree of Impact: High.
Report 1: Not Available.
Comments: Not Available.
Report 2: In June 2018 the NCUA proposed amendments to the NCUA's general lending rule to provide FCUs with an additional option to offer PALs.[25] This proposal would not replace the current PALs rule (PALs I). Rather, it would be an alternative option, with different terms and conditions, for FCUs to offer PALs to their members. Specifically, this proposal (PALs II) would differ from PALs I by modifying the minimum and maximum amount of the loans, modifying the number of loans a member can receive in a rolling six-month period, eliminating the minimum membership requirement, and increasing the maximum maturity for these loans. The proposal would incorporate all other requirements of PALs I into PALs II. The NCUA also solicited advanced comment on the possibility of creating a third PALs loan program (PALs III), which could include different fee structures, loan features, maturities, and loan amounts. The comment period for this proposal closed on August 3, 2018. The Task Force recommends that the NCUA evaluate

[22] 83 FR 55467 (Nov. 6, 2018).

[23] 83 FR 12283 (Mar. 21, 2018).

[24] 83 FR 56640 (Nov. 13, 2018).

[25] 83 FR 25583 (June 4, 2018).

the comments received and explore the development of a PALS II final rule and potentially a PALS III proposal.

13. § 701.21—Loans to members and lines of credit to members

Addresses: Loan maturity limits for FCUs.
Sections: 701.21(c)(4)(e), (f), & (g).
Category: Clarify.
Degree of Effort: Moderate.
Degree of Impact: High.
Report 1: 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 GAAP standard for a ''new loan'' is not subject to the maturity limits. In addition, consider providing longer maturity limits for 1- to 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.

Comments: Approximately ten commenters offered general support for the recommendations. Approximately ten commenters supported co-locating the maturity limits. These commenters stated that having limits spread across the regulations is confusing and inefficient and felt that having all of the limits in one section will improve compliance. Several commenters specifically supported incorporating the legal opinion. These commenters felt this would provide clarity and consistency across the examination regions and help compliance. Approximately five commenters specifically supported longer maturity limits for 1- to 4- family real estate loans and other similar housing loans and elimination of the case-by-case exception. These commenters argued that longer maturity limits would allow credit unions to more effectively compete in the real estate lending market. One of these commenters felt that removing the case-by-case requirements is consistent with the NCUA's decision to give credit unions greater flexibility in making loans, provided such loans are consistent with prudent safety and soundness standards. Several other commenters specifically suggested amendments to the FCU Act's loan maturity provisions, including changes to designate 1- to 4-non-owner occupied loans as real estate loans rather than member business loans (MBLs).

Report 2: The NCUA issued a proposed rule with a request for comment in August 2018 addressing the first report's recommendations.[26]

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.
Report 1: 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.

Comments: Approximately ten commenters agreed with the recommendation and offered general support. Two of these commenters stated that the recommendation will provide consistency for compliance purposes. One commenter supported the recommendation, but also asked for additional guidance and/or clarification as to the application of associated borrower in the commercial lending context. One commenter suggested moving this recommendation to Tier 3 so that resources can be used on more substantive relief.

Report 2: The NCUA Board requested further comment on the single borrower and group of associated borrower limits in the August 2018 proposal addressing loan maturities.[27]

14. Part 722—Appraisals

Addresses: Appraisals.
Sections: 722.
Category: Expand Relief.
Degree of Effort: Moderate.
Degree of Impact: High.
Report 1: The NCUA should further explore issuing a rule to raise appraisal thresholds separately from the interagency process. In response to comments received through the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) process, the 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, the 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 the NCUA's regulation for most real estate related loans, but also recognize a separate appraisal threshold of $1 million for 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 the 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, the NCUA further explore issuing a rule to raise both thresholds separately from the interagency process.

Comments: Approximately ten commenters specifically stated that they supported raising the commercial real estate threshold to $400,000. One commenter strongly opposed raising the commercial real estate threshold. The commenter argued that the federal banking agencies' proposal exemplified regulatory arbitrage, and contradicts regulators' concerns regarding the commercial real estate market and the quality of evaluations. The commenter felt that regulators should be calling for heightened due diligence by institutions, particularly for credit unions and small community/regional banks, which the commenter suggested are less likely to have robust collateral risk management policies, practices, and procedures. The commenter asserted that bank failures overwhelmingly occur amongst smaller institutions and are in large part due to poor commercial lending decisions. The commenter also cited a recent survey that purportedly indicated an overwhelming majority of those closest to this issue believe that the thresholds should remain at $250,000. The commenter said that, while they appreciate lender concerns about appraiser availability in some rural areas, a national policy should not be tailored around isolated conditions.

[26] 83 FR 39622 (Aug. 10, 2018).
[27] *Id.*

The commenter stated that any one real estate market may experience rapid growth, but that growth may increase the importance of appraisals, as real estate is prone to market fluctuations. The commenter further emphasized that during the EGRPRA process many bank representatives' appraisal concerns related to residential not commercial topics. To that point, the commenter noted that the number of commercial real estate appraisers has remained relatively steady in recent years as commercial lending activity has seen slight increases. The commenter concluded by saying that if the agencies proceed with the proposal the qualifications requirements for those completing evaluations should be raised or elevated to offset the safety and soundness risks caused by the increase in the threshold level.

Approximately ten commenters specifically supported raising the threshold level for certain qualifying business loans (QBLs) to $1 million like it is for banks. One of these commenters provided a lengthy historical discussion on the NCUA's appraisal waiver provision, § 722.3(a)(9), and compared it to the FDIC's exemption for QBLs. The commenter analogized the need to remove the clunky waiver process to the NCUA's recent removal of the MBL waiver. One commenter opposed raising the QBL threshold. The commenter was pleased the EGRPRA review did not recommend an increase in the QBL threshold. The commenter said that this is consistent with statements made by banking sector representatives, who expressed little to no concern about the current threshold during several outreach meetings. The commenter also noted that many of the loans that would be impacted by a proposed increase in the owner-occupied threshold level are guaranteed by the Small Business Administration (SBA) and that currently the SBA requires an appraisal for all loans above $250,000.

Approximately ten commenters offered support for the NCUA to act separately from the interagency appraisals working group. The commenters expressed that raising the appraisal thresholds outside of the current interagency process makes sense as credit unions and the NCUA's regulations differ from banks and the other agencies' regulations. The commenters said that the changes should maximize relief, be consistent with credit union practice, and quickly provide parity with the requirements applicable to banks on appraisals.

Conversely, one commenter said that absent more information, the NCUA's withdrawal from the interagency rulemaking was concerning. The commenter noted that state and federal regulators have recognized that current appraisal requirements are in some cases overly burdensome without producing a measurable offsetting supervisory benefit. The commenter also observed that critique of the appraisal requirements was a prominent theme in response to the EGRPRA process. The commenter stated two primary concerns with the NCUA's withdrawal. First, the commenter said that the purpose of the Federal Financial Institutions Examination Council (FFIEC) is to coordinate consistent standards and that having divergent supervisory standards can cause complications when banks and credit unions interact in the marketplace. The commenter stated that the existing appraisal standard discrepancies have caused complication with loan participations, confused consumer/member borrowers, and confused loan officers. Second, the commenter was also concerned that when the NCUA has broken with its federal banking agency peers in the past it has been to impose unnecessarily higher standards on credit unions.

Approximately three commenters stated the appraisals reforms should be made a priority. One of these commenters said that it was important to their state's credit unions. Another of these commenters stressed that this should be proposed as soon as feasible to afford credit unions the same regulatory flexibility that other depository institutions now have. A different commenter stated that the inconsistency of the appraisal requirements for business loans made by credit unions compared to banks is a top issue for credit unions.

One commenter stated that the current thresholds limit the ability of credit unions to use more advantageous rules on appraisals from the secondary market. The commenter noted that Fannie Mae provides appraisal waivers for some home purchase loans when there is a 20% down payment and a prior appraisal was obtained under its Collateral Underwriter program. The commenter said that Freddie Mac has a similar approach. The commenter stated that certain new mortgage refinancing, such as when the borrower has at least 20% equity in the home and is not receiving cash as part of the transaction, generally no longer requires appraisals in the secondary market. The commenter urged the NCUA Board to consider these developments as it reviews the NCUA's appraisal requirements.

Finally, one commenter encouraged dialogue with state regulators as changes are considered.

Report 2: The NCUA issued a proposed rule with a request for comment in September 2018 addressing the first report's recommendations.[28] The agency issued this proposal separately from the other banking agencies. The proposal would increase the threshold below which appraisals would not be required for non-residential real estate transactions from $250,000 to $1,000,000. For non-residential real estate transactions that would be exempted from the appraisal requirement as a result of the revised threshold, federally insured credit unions would still be required to obtain a written estimate of market value of the real estate collateral that is consistent with safe and sound lending practices. Additionally, the proposal would restructure § 722.3 of the NCUA's appraisal regulation to clarify its requirements for the reader. Finally, the proposal would, consistent with the Economic Growth, Regulatory Relief, and Consumer Protection Act,[29] exempt from the NCUA's appraisal regulation certain federally related transactions involving real estate where the property is located in a rural area, valued below $400,000, and no state certified or licensed appraiser is available.

15. 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.[30]

Report 1: Explore ways to implement the requirements of the FCU Act in the least costly way possible. While requiring fidelity coverage is statutorily mandated by the FCU Act, the 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 the NCUA's involvement in a credit union's operational decisions while remaining consistent with the FCU Act. This should be done separately from the Regulatory Reform Task Force process.

Comments: Approximately five commenters agreed that credit unions should be able to make business decisions on required fidelity bond and insurance coverage. One commenter

[28] 83 FR 49857 (Oct. 3, 2018).

[29] Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, 132 Stat. 1296 (2018).

[30] Includes potential efficiencies and/or cost savings for NCUA.

suggested a working group that includes credit unions and insurers to update the rules to provide flexibility to make business decisions about bond coverage, particularly regarding the scope of coverage and deductibles. The commenter also felt that an ANPR would be useful to identify the range of issues before an actual proposal is developed. One commenter suggested that the NCUA move this to Tier 2 and focus on more pressing relief given the NCUA's recent legal opinion relative to this topic.[31]

Report 2: The NCUA issued a proposed rule with a request for comment in November 2018 addressing the first report's recommendations.[32] The NCUA also issued a legal opinion addressing the permissibility of certain joint coverage provisions in fidelity bonds in September 2017.[33]

3. Future Actions

16. 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.

Report 1: 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.

Comments: Approximately five commenters offered general support for the recommendation. One commenter said that relief in this area is not a high priority and suggested a Tier 3 prioritization.

Report 2: The Task Force recommends adopting the first report's recommendation and prioritization. A proposed rule addressing this recommendation will likely be issued during the first quarter of 2019.

17. Part 715—Supervisory Committee Audits and Verification

Addresses: Audit per Supervisory Committee Guide.
Sections: 715.7(c).
Category: Clarify.
Degree of Effort: Moderate.
Degree of Impact: High.

Report 1: Revise this provision to remove the reference to the NCUA's Supervisory Committee Audit Guide. In its place, include minimum standards a supervisory committee audit would be required to meet if the committee does not obtain a CPA opinion audit.

Comments: Two commenters offered general support for the recommendations. Three commenters suggested that if the NCUA pursues this change, it should not impose additional compliance burdens and instead only simplify, clarify, and streamline the ''minimum standards'' required for supervisory committee audits. Another commenter argued that more substantial changes are needed. The commenter stated that while the NCUA applies some of part 715 to FISCUs by reference in §§ 741.6 and 741.202, it is unclear which provisions of part 715 apply to FISCUs. The commenter asked the NCUA to clarify which requirements apply to FISCUs by fully incorporating the audit requirements applicable to FISCUs in part 741. The commenter also recommended that the NCUA separate the FCU Supervisory Committees' rules from FISCUs' audit requirements since not all FISCUs use supervisory committees in their governance structures or for audits. One commenter asked that this recommendation be moved to Tier 3 because relief in this area is not a high priority.

Report 2: The Task Force recommends adopting the first report's recommendation and prioritization. A proposed rule addressing this recommendation will likely be issued during the first quarter of 2019.

18. Subordinated Debt (Formerly Alternative Capital)

Addresses: Subordinated Debt.
Sections: 702 generally.
Category: Expand Authority.
Degree of Effort: High.
Degree of Impact: Low.

Report 1: 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 FICUs could use in meeting capital standards. First, the NCUA Board should decide whether to make changes to the secondary capital regulation for low-income designated credit unions. Second, the NCUA 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.

Comments: Approximately fifteen commenters offered general support for the recommendation. Several commenters suggested that the NCUA has the statutory authority to include alternative capital to satisfy the risk-based net worth requirement, and should do so. These commenters felt that an initial volume limit of 25% of retained earnings or 2% of total assets, whichever is greater, would be appropriate. Several other commenters said that alternative capital is necessary considering the RBC requirements. Another commenter argued that, in addition to allowing credit unions to use supplemental capital for RBC requirements, the NCUA should allow supplemental capital to be counted towards the current PCA capital requirements. The commenter said that the ability to raise supplemental capital provides the credit union industry and the NCUSIF additional layers of protection against unexpected losses.

Approximately three of these commenters specifically said that they support efforts to explore additional sources of capital for purposes of net worth requirement calculations. These commenters felt supplemental capital should be permitted to count toward the risk-based net worth requirements. Several of these commenters suggested a supervisory approach that sets forth base requirements for issuance of capital instruments without specifying precisely how such broadly-defined instruments would comply. The commenters stated that the focus instead should be on the approval process, similar to the Food and Drug Administration's drug monograph approval procedures.

Another of these commenters urged the NCUA to promulgate a rule that incorporates the following principles: (1) Preserve the not-for-profit, mutual member-owned and cooperative structure of credit unions and ensure that ownership interest remains with the members; (2) ensure that the capital structure of credit unions is not fundamentally changed; (3) provide a degree of permanence such that the sudden outflow of capital will not occur; (4) allow for a feasible means to augment supplemental capital; and (5) provide a solution with market viability.

Several commenters stated that secondary capital and supplemental capital should be consolidated. One commenter felt that for supplemental capital to be effective it should: Transfer risk outside of the credit union system; be scalable and appropriate to the size and complexity of the credit union; and provide sufficient parity with the banks so as not to negatively impact investor

[31] OGC Op. Ltr. 17–0959 (Sept. 26, 2017).
[32] 83 FR 59318 (Nov. 23, 2018).
[33] OGC Op. Ltr. 17–0959 (Sept. 26, 2017).

interest in credit union supplemental capital instruments. One commenter suggested that the NCUA create a pilot program for alternative capital, similar to the derivatives rule. The commenter believed that by piloting supplemental capital with a select group of well-capitalized, well-managed credit unions, the NCUA could efficiently monitor the program's effectiveness and glean best practices that could benefit the entire industry.

At least eight commenters emphasized that this issue should be made a Tier 1 priority. One of these commenters argued that two years is too long to wait to be able to participate in capital markets. The commenter emphasized that credit unions are required to maintain the same capital ratios, sustain the same reserves, and pay for deposit insurance the same as any bank. Several commenters asked the NCUA to reaffirm its commitment to implement the rule prior to the 2019 RBC effective date. Several commenters expressed concern that the report is ambiguous as to whether the agency remains committed to a robust alternative capital rulemaking, which they deem contrary to previous statements from the NCUA linking alternative capital rulemaking to RBC. The commenters argued that substantial work and deliberation has already been done and to abdicate the progress made would squander one of the more significant, and long sought, regulatory relief opportunities before the NCUA.

More specifically, one commenter took issue with the report stating that 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.'' The commenter said that the NCUA Board's public statements seem to show this affirmative decision has already been made and mentioned that substantial work has already been done to develop the rule. The commenter cited the RBC comment process, the 2017 alternative capital ANPR, and the 2007 working group white paper as evidence of the work already done. The commenter asked the NCUA Board to move forward now to capitalize on this momentum. The commenter also emphasized that the NCUA, the NCUA Board, and the Chairman have consistently stated the intent to implement the supplemental capital rule prior to the RBC requirements' effective date and took issue with the report providing ''no compelling justification to reverse course.'' The commenter argued that abandonment of this initiative is inconsistent with the regulatory reform agenda's goals and while the report's effort/impact matrix makes sense generally, it falls short given the NCUA Board's consistent statements. The commenter further pointed to statements by the Chairman that suggest the rule would afford credit unions heightened opportunity to extend job-creating small business loans that strengthen the economic viability of Main Street. Additionally, the commenter reiterated that RBC requirements may impose significant regulatory burden if not accompanied by access to some form of supplemental capital. The commenter concluded that a well-designed supplemental capital rule would serve as a tool to help credit unions meet the new RBC requirements and would ensure that the RBC rules are comparable to other bank regulatory agencies as required by 12 U.S.C. 1790d(b)(1)(A).

Another commenter was perplexed by alternative capital's Tier 2 placement, especially since the NCUA has prioritized other PCA/net worth requirement related provisions in Tier 1. For example, the commenter argued that alternative capital's Tier 2 placement would make it unavailable for use in meeting risk-based net worth requirements until after the RBC rule's effective date. The commenter also took issue with the fact that the first report is ''ambiguous'' as to whether the agency remains committed to a robust alternative capital rulemaking. The commenter felt this contrary to repeated statements from the NCUA unequivocally linking an alternative capital rulemaking to RBC. The commenter said that alternative capital is an essential tool for both low-income designated credit unions and non-low-income designated complex credit unions to meet net worth thresholds. The commenter also cited an FAQ on the NCUA's website stating that the NCUA Board plans to move forward with a rule to allow supplemental capital to be counted in the RBC numerator before the rule's effective date.[34] The commenter lamented that substantial work and deliberation has already been done, including, but not limited to: A 2007 whitepaper concluding supplemental capital was a worthwhile policy goal; solicitation of input on supplemental capital during the RBC comment process; a 2016 NCUA Board briefing on issues related to supplemental capital; a 2017 ANPR with over 100 supportive comments; and legislation introduced in Congress to provide alternative capital authority for all credit unions without regard to RBC standards. The commenter acknowledged that alternative capital is complex, but emphasized that state regulators, the NCUA, and many in the credit union system have been studying this issue and developing regulatory frameworks for well over a decade. The commenter asked the NCUA to commence rulemaking to enhance low-income designated credit union secondary capital rules and to establish supplemental capital for RBC.

One commenter strongly disagreed that an alternative capital overhaul would have a low impact and instead felt alternative capital authority would have a substantial impact. The commenter argued that capital modernization is needed as credit unions face both external challenges such as economic cycles, social media and Bank Transfer Day, with no growth opportunities beyond retained earnings. The commenter said that the need for increased earnings through managed risk is stronger than ever and a critical component of capital modernization. The commenter stated that credit unions are seeking the ability to increase loan portfolios and other growth opportunities within the not-for-profit cooperative structure. The commenter believed authority to issue and accept alternative capital is vital to safe-guarding the future of the credit union system and argued that unforeseen circumstances could strain a credit union's capital position to a point where the ability to quickly raise supplemental capital would be a valuable option. The commenter felt that increasing retained earnings, often the only current option, may not be sufficient in a severely stressed situation. The commenter suggested that alternative capital would also provide an additional source of protection for the NCUSIF.

Report 2: Upon further consideration and in response to stakeholder feedback the Task Force moved this recommendation from Tier 2 to Tier 1. Subordinated debt (formerly alternative capital) is a priority for the Chairman, the agency, and commenters. As such, all recommendations associated with subordinated debt were moved to Tier 1. All other aspects of this recommendation remain unchanged.

[34] Frequently Asked Questions about NCUA's Risk-Based Capital Final Rule October 2015 (stating ''Q10. Will credit unions be authorized to raise supplemental capital for purposes of risk-based net worth? Yes. The NCUA Board plans in a separate proposed rule to address comments supporting additional forms of supplemental capital. As the risk-based capital final rule does not take effect until January 1, 2019, there is ample time for the NCUA Board to finalize a new rule to allow supplemental capital to be counted in the risk-based capital numerator before the effective date.''), *available at https://www.ncua.gov/Legal/Documents/RBC/RBC-Final-Rule-FAQs.pdf.*

19. § 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.

Report 1: 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.

Comments: In response to this recommendation, six commenters were supportive of alternative capital generally. One commenter said that more credit unions are looking to take advantage of the economic opportunities of secondary capital. The commenter stated that although it is a comparatively small field now, amendments could offer a new avenue for low-income designated credit unions that are hesitant due to regulatory barriers to find new sources of capital and help to provide services for chronically underserviced communities. The commenter felt that improving regulatory clarity and reducing the burden of the approval process could benefit low-income designated credit unions and the communities they serve.

Another commenter argued that secondary capital accounts should be controlled by state law for FISCUs, including those seeking a low-income designation by their state regulatory agency. The commenter believed that the limits §§ 701.32 and 701.34 place on FISCUs pursuant to § 741.204 are unnecessarily preemptive and unduly burdensome. The commenter felt that while secondary capital accounts do not count toward regulatory capital requirements for non-low-income designated credit unions, the ability to offer the accounts is not inherently unsafe and unsound, and therefore should be subject to state law.

Report 2: Upon further consideration and in response to stakeholder feedback the Task Force moved this recommendation from Tier 2 to Tier 1. Subordinated debt (formerly alternative capital) is a priority for the Chairman, the agency, and commenters. As such, all recommendations associated with subordinated debt were moved to Tier 1. All other aspects of this recommendation remain unchanged.

20. § 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.

Report 1: Recommend revising this section of the regulation to comprehensively address the borrowing authority for FCUs. See the January 2017 ANPR on alternative capital for a discussion on this subject. Also, see recommended changes to part 702. A comprehensive borrowing rule could provide clarity and certainty needed to support supplemental capital.

Comments: Several commenters said that a comprehensive borrowing rule could provide clarity to support supplemental capital concerns, but cautioned against imposing additional regulatory burdens. These commenters stated that any rule should retain flexibility for credit unions to structure the offering in a cost-effective manner, regardless of the nature of the capital instrument, be it equity or subordinated debt. One commenter suggested the NCUA implement a pilot program similar to the derivatives rule. The commenter felt that a pilot program would yield best practices that could benefit the entire industry. The commenter recognized that statutory amendments may be necessary to provide meaningful alternative capital options for all credit unions, but suggested that a revised regulatory capital framework would still offer increased flexibility to credit unions that must meet the NCUA's risk-based net worth requirement. One commenter asked for a Tier 1 prioritization.

Report 2: Upon further consideration and in response to stakeholder feedback the Task Force has moved this recommendation from Tier 2 to Tier 1. Subordinated debt (formerly alternative capital) is a priority for the Chairman, the agency, and commenters. As such, all recommendations associated with subordinated debt were moved to Tier 1. All other aspects of this recommendation remain unchanged.

21. § 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.

Report 1: Raise the nonmember deposit limit from 20% to 50%. As the functional equivalent of borrowing, this will parallel the ability of credit unions to borrow from any source up to 50% of paid-in and unimpaired capital and surplus per § 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.

Comments: Approximately five commenters offered general support for the recommendation. Several commenters noted that they support the development and preservation of community development credit unions and the use of the NCUA's statutory authority to support and encourage their growth. These commenters felt that raising the nonmember deposit limit to 50% would be a positive step. One commenter believed that raising the limit would allow credit unions to establish deeper relationships with political subdivisions and other public units, such as cities and counties. Another commenter noted that concerns regarding the limit have caused many to shy away from or unnecessarily limit a strategic source of liquidity. The commenter stated that, as is the case for loan participations, the use of the national wholesale market on both the liability side of the balance sheet as well as the asset side allows credit unions to manage certain risks with greater precision and provides for the ability to take advantage of liquidity sources that may allow for expansion of services while competing on a level playing field. One commenter stated that these types of transactions are functional equivalents to borrowings and should be subject to the same limits. Another commenter asked that the NCUA provide an exemption to any state regulatory authority that seeks to set a higher limit. Finally, several commenters asked for a Tier 1 prioritization.

Report 2: Upon further consideration and in response to stakeholder feedback the Task Force has moved this recommendation from Tier 2 to Tier 1. All other aspects of this recommendation remain unchanged.

22. § 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.

Report 1: 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.

Comments: Approximately ten commenters offered general support for the recommendation. One commenter supported allowing the flexibility to structure senior executive compensation plans to incorporate lending incentives. The commenter felt that such plans will help credit unions compete more effectively for talent and align organizational goals more closely with individual incentives. Another commenter supported the recommendation, but encouraged the NCUA to add stipulations that would require loan delinquencies to be given consideration so that the quality of the loans is measured. Several commenters argued that *de minimis* thresholds should apply in any assessment of compensation, either discretionary or compulsory.

Multiple commenters asked the NCUA to clarify how the agency interprets ''overall financial performance'' in § 701.21(c)(8)(iii). One of these commenters stated that, despite the rule's allowance for covered employees to receive compensation based on the credit union's ''overall financial performance,'' credit unions and examiners sometimes disagree regarding compensation programs that appear to meet this requirement. Another commenter stated that two provisions in particular create confusion and unduly limit well managed credit unions' ability to provide incentives for good performance: (1) Section 701.21(c)(8)(iii)(B) permits bonuses and compensation to an employee but it must be based on the ''overall financial performance'' of the credit union, rather than being tied to the performance of their department or individual function; and (2) Section 701.21(c)(8)(iii)(C), under which a bonus or incentive may be provided to an employee in connection with lending performance, but the employee cannot be a senior management official. According to the commenter, the 1995 final rule's preamble states that the rule allows FCUs to pay: ''(1) to any employee, including a senior management employee, an incentive or bonus based on the overall financial performance of the credit union.'' The commenter argued that, while the regulatory text does not specifically include the ''including senior management'' language in subsection (iii)(b), the preambles of the proposal and final rules make clear the intention to include senior management in the exception. According to the commenter, the 1995 final rule did not articulate any specific concerns to warrant the exclusion of senior management from the overall financial performance exception.

One commenter did not support the incentive compensation proposal.

Report 2: The Task Force recommends adopting the first report's recommendation and prioritization.

23. 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.
Report 1: 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'' [35] or that are ''providing services which are associated with the routine operations of credit unions.'' [36]

Comments: A handful of commenters offered very general support for increasing and enhancing CUSO permissible activities. Several commenters that supported expanding CUSO permissible activities argued that, for many credit unions, the use of CUSOs will be essential as the need to seek operational efficiencies intensifies and credit unions face increasing competitive pressure from a variety of depository and non-depository financial service providers, such as fintechs. The commenters indicated that CUSOs provide a means for credit unions to address challenges related to changing consumer expectations and the need for technologies to better serve credit union members. Another commenter suggested that the NCUA abandon the preapproved list of CUSO activities and permit credit unions to invest in or loan to CUSOs offering products and services generally incidental to credit union business.

One commenter asked the NCUA to allow limited FCU investment in a FISCU CUSO even if that FISCU CUSO engages in activities not permissible for an FCU. The commenter argued that *de minimis* exposure should not rise to the level of being considered circumvention of FCU permissible activity provisions and suggested that this change would expand the opportunities for system collaboration and innovation.

Approximately five commenters asked that the NCUA expand and clarify CUSOs' loan origination powers. Commenters suggested that the NCUA expand permissible activities in § 712.5 to include ''loan origination of all types of loans that may be provided by a credit union.'' The commenters noted that with this addition the specific origination authority for business loans, consumer mortgage loans, student loans, and credit card loans could be deleted. Several of these commenters also suggested the NCUA make it clear that CUSOs are able to make, purchase, or sell any types of loans that credit unions can make on their own. Several commenters wrote extensively on this issue.

One of these commenters believed that CUSOs can play a pivotal role as credit unions turn increasingly to collaborative solutions in lending to reduce costs and compete with non-credit union loan aggregators. The commenter said that if CUSOs cannot be loan aggregators, credit unions will be at the mercy of non-credit union loan aggregators who are not willing to deal with the membership requirements. The commenter noted that credit unions are currently excluded from participation in the loan aggregation networks that more consumers are turning to for loans, especially for auto loans. The commenter argued that the fact that some types of loans are permitted to be originated by CUSOs and some are not seems based on historical happenstance rather than any sound policy. The commenter, along with several other commenters, stated that § 712.5 is a categorical list of pre-approved activities a CUSO may provide and not meant to be an exclusive laundry list of activities. However, the ''categories'' of loan origination services CUSOs are permitted to provide are not categories of services by themselves and create confusion in the industry. To demonstrate this, the commenter noted that ''business loan origination'' has meant for years that CUSOs can originate and hold ''business loans'' and asked if this precludes a CUSO from originating ''commercial loans.'' Similarly, the commenter asked if ''consumer mortgage loan origination'' precludes the origination of home equity loans or lines of credit. The commenter emphasized that selective lending power can be awkward and confusing.

The commenter suggested the time is appropriate to expand CUSO lending powers. The commenter argued that CUSOs should have the power to ''originate and hold all types of loans credit unions can make.'' The commenter believed that this change would create an unambiguous, rational, and highly defensible lending services definition for CUSO powers and would correct a policy that the commenter felt

[35] 12 U.S.C. 1757(5)(D).

[36] 12 U.S.C. 1757(7)(I).

authorizes certain lending powers for CUSOs and excludes others without a rational basis. More specifically, the commenter suggested that the NCUA amend § 712.5 by deleting references to the origination of business loans, consumer mortgage loans, student loans and credit card loans (§ 712.5(c), (d), (n), and (s)) and adding the power to ''originate and hold loans, including the authority to buy and sell participation interests in such loans'' as a new § 712.5(c).

A handful of commenters emphasized that the ability for CUSOs to package and sell loans to investment buyers is critical to credit unions moving forward, particularly if Fannie Mae and Freddie Mac are eliminated or their presence in the marketplace is reduced. The commenters felt that to continue cost effectively providing home loans that put the borrowers first, credit unions need to participate in the securitization market. The commenters stressed that secured loan investment packages require scale in order to make them affordable and attractive in the marketplace and noted that, except for a limited few, credit unions do not have sufficient loan volume to create single issuer loan packages. The commenters encouraged the NCUA to explore the ability of multiple credit unions to combine to sell their loans in multi-issuer packages with cross-indemnifications. The commenters concluded that enabling this cooperative activity would be a significant contributor to future financial health and stability for the industry.

Approximately five commenters provided comments addressing CUSO examinations. Several of these commenters provided general statements that CUSOs should not be subject to full examinations. Several other commenters asked the NCUA to revise the current approach to safety and soundness supervision of credit union CUSO investments and suggested it is best performed through the credit union supervisory framework, not the direct supervision of CUSOs themselves. The Task Force notes that the NCUA does not directly regulate or supervise CUSOs, but instead supervises credit unions' CUSO investments through the credit union supervisory framework.

Several commenters asked the NCUA to stop exercising *de facto* exam powers over CUSOs. The commenters described these exams as compelling CUSOs to report directly to the NCUA and comply with NCUA directives through the credit union owners and felt this was an exercise of power without specific congressional authority. The commenters asked the NCUA to revise the regulations in a manner that leaves no doubt that the agency is acting both within its authority and consistently with the need for safety and soundness supervision of credit union CUSO investments. The commenters also suggested that the NCUA use this regulatory review process to continue to compile necessary data on the investment of credit unions in CUSOs through the registry, but discontinue conducting *de facto* examinations in the form of CUSO reviews.

One commenter said that if the NCUA elects to continue to exercise *de facto* supervision over CUSOs, the agency should formally advise the Bureau of Consumer Financial Protection (BCFP) of that fact. The commenter noted that the BCFP administers the Secure and Fair Enforcement for Mortgage Licensing Act and the licensing and registration of mortgage loan originators (MLOs). The commenter said that prior to the passage of the most recent CUSO regulation, the NCUA advised the BCFP that it did not have the power to regulate CUSOs. The commenter said that this resulted in MLOs in the CUSOs providing mortgage lending services having to be licensed and not registered. The commenter explained that in multi-state situations, this means that MLOs and the CUSOs may have to be licensed in many states and incur greatly increased expenses and regulatory burden. The commenter requested the NCUA's assistance, should it continue to conduct *de facto* CUSO examinations in the form of CUSO reviews, in informing the BCFP that the NCUA exercises sufficient supervision over CUSOs to justify that CUSOs be exempt from the licensing requirements and the MLOs in CUSOs qualify for registration.

Several commenters said that they believe the percentage credit unions can invest in CUSOs should be increased. The Task Force notes that the FCU Act limits FCU CUSO investments to the 1% of paid-in and unimpaired capital and surplus currently permitted by § 712.2(a) of the NCUA's regulations.[37]

Another commenter noted that they support review of the CUSO regulation and said that they felt the January 2016 changes were punitive and excessive in light of the relatively low risk CUSOs pose to the system and went beyond the NCUA's authority. The commenter believed that the current rule burdens CUSO operations and limits credit unions' abilities to use CUSOs to maximize their services. The commenter said that, for example, the rule established elaborate reporting of CUSO activities to the NCUA and includes a list of high risk CUSO activities such as payroll processing that subject CUSOs to additional requirements. The commenter asked the NCUA to reconsider these requirements. The commenter also asked the NCUA to reconsider the need for the ''costly CUSO Registry.'' Additionally, the commenter said that they did not support the NCUA's past efforts to obtain statutory authority over CUSOs and other third-party service providers. The commenter stated that they appreciate that the current NCUA Board is not pressing Congress for such authority. The commenter felt that such authority would be an unnecessary expansion of the agency, would result in higher costs to credit unions, and would divert the agency from its primary mission of supervising and regulating credit unions.

One commenter asked the NCUA to reorganize the CUSO rules to co-locate FISCU applicable provisions or move the FISCU applicable provisions to part 741 to eliminate confusion as to which provisions apply to FISCUs.

One commenter suggested that there should be a way for a corporate credit union to make a minimal investment in a company without treating it as a corporate CUSO. The commenter stated that many companies shun corporate credit union investment dollars due to the regulatory constraints of becoming a corporate CUSO, having to primarily serve credit unions and to follow the various regulatory restrictions of part 704. The commenter said that without the opportunity to invest in companies, a corporate credit union cannot direct or participate in the direction of new products or services. The commenter argued that the intent of an investment in such a company is not measured by a return as it is with traditional investments (securities) but instead is an opportunity to help bring new technologies, products, and services to credit union members.

Finally, a commenter, noting their strong belief in the economies of scale and other advantages that CUSOs confer to credit unions, asked the NCUA to increase the prioritization of CUSO reform. The commenter recommended that the NCUA Board publish an ANPR in 2018 that solicits ideas and other feedback.

Report 2: Upon further consideration and in response to stakeholder feedback the Task Force has moved this recommendation from Tier 3 to Tier 1. After reviewing the degree of effort and the potential impact, the Task Force believes that this recommendation is

[37] 12 U.S.C. 1757(7)(I).

more appropriately placed in Tier 1. The change should be low effort and high impact. The NCUA plans to issue a 2019 proposed rule on allowing CUSOs to originate any loan that a credit union may provide.

24. § 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.[38]

Report 1: 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.

Comments: Several commenters offered general support for the recommendations. A handful of commenters urged the NCUA to further explore options, including eliminating the maximum interest rate. Approximately five commenters noted that the loan interest rate ceiling has stayed at 18% since 1987 and felt it makes sense to study whether future rate changes should be tied to a domestic index. One of these commenters felt such a change would give much-needed elasticity to a rate cap that hasn't changed since 1987 despite dramatic economic swings. Another commenter felt that a variable rate could result in more certainty for FCUs regarding future loan rate ceilings and would facilitate credit union lending and overall planning.

One commenter suggested amending the ceiling to a 15% spread over prime, and articulated a belief that this action would help credit unions reduce interest rate risk. The commenter said that the NCUA has urged credit unions to be vigilant in identifying and managing interest rate risk and felt this action would go a long way towards helping credit unions reduce risk. The commenter believed that adjusting the interest rate cap so it floats with the level of prime would provide regulatory relief to the entire industry because it would benefit any credit union that makes variable rate loans to its members. The commenter said that, absent this relief, credit unions will either absorb margin compression, which places more capital at risk, or scale back lending to certain segments of the population. The commenter felt that this relief would enable credit unions to remain competitive, serve a broader spectrum of their members, and better manage risk and capital. The commenter concluded that this would provide relief for credit unions and reduce risk to the NCUSIF because the industry would be better positioned to absorb rising interest rates.

Several commenters said that removal of a specific means for notifications is appropriate given the pace of development in modern communication technology. The commenters believed that, to that end, the NCUA should take steps to ensure the application of this principle to all aspects of credit unions' communications, including advocating that credit unions have the flexibility to contact their members via modern communications.

Several commenters asked the NCUA to move the recommendation to Tier 1. One of the commenters urged the NCUA to make this its top priority given rising rates and the expectation the Federal Reserve Board will continue to raise rates in 2018.

Report 2: Upon further consideration and in response to stakeholder feedback the Task Force has moved this recommendation from Tier 3 to Tier 1. In addition to being a priority for commenters, the loan interest rate is a priority for the Board. As such, the NCUA plans to issue a 2019 ANPR to solicit further input.

4. Other Commenter Suggestions for Tier 1

One commenter asked the NCUA to eliminate the readily marketable collateral standard in the new MBL rule. The commenter said that readily marketable collateral is a legal term of art that has not previously been imposed on credit unions. The commenter stated that, in determining whether to classify collateral as "readily marketable," the Office of the Comptroller of the Currency has focused on an instrument's fungibility, trading ease, the ability to obtain reliable price quotations on a daily basis, and trading of the instruments through a regulated market. The commenter noted that, unlike banks, which the commenter said can easily obtain and utilize such collateral, credit unions typically do not often deal with collateral that satisfies the above criteria. The commenter said that this has resulted in some credit unions being unable to engage in MBLs that they were previously authorized to engage in, notwithstanding the fact that one of the primary purposes of the NCUA's MBL reforms was to give credit unions greater flexibility to make MBLs provided doing so was consistent with a credit union's risk profile and expertise. The commenter concluded that the NCUA should exercise its regulatory power to remove the readily marketable collateral standard and instead mandate that a credit union only be allowed to make such loans based on sound and prudent underwriting standards backed by adequate collateral. The commenter suggested a Tier 1 prioritization for this recommendation.

Several commenters asked for changes related to the restoration of accrual status on member business loan workouts. The commenters recommended clarifying appendix B to part 741, the interpretive ruling and policy statement on loan workouts, non-accrual policy, and regulatory reporting of troubled debt restructured loans. More specifically, the commenters recommended the NCUA align its policy pursuant to restoration to accrual status on member business loan workouts with those of other federal bank regulators. The commenters said that the NCUA's rules require a repayment period of six consecutive payments while banking agencies require only six consecutive months. The commenter stated that the NCUA's more restrictive term creates difficulties with credits with annual payments. The commenters said that under the NCUA's structure a credit could be in non-accrual status for six years despite strong performance in the case of an annual credit. The commenters asked the NCUA to reconsider whether the more stringent repayment requirement for credit union commercial accrual status remains necessary. One of these commenters noted that semi-annual or annual payment schedules are commonly found in agricultural purpose MBLs. The commenters suggested a Tier 1 prioritization for this recommendation.

ii. Tier 2 (Year 3)

1. Part 703—Investment and Deposit Activities

Addresses: Investment and Deposit Activities.

Sections: 703.

Category: Improve & Expand.

Degree of Effort: High.

Degree of Impact: High.

Report 1: 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 FISCUs as well). See the appendix for details on modifying this regulation.

Investments Comments: Approximately ten commenters offered

[38] Includes potential efficiencies and/or cost savings for NCUA.

explicit support for the expansion of investment authority, removal of unnecessary restrictions not required by the FCU Act, and a principles-based approach. Several of these commenters said that these changes would allow credit unions to reduce risk and perform better. Several more of these commenters said that in order to be competitive in today's financial services marketplace credit unions should be permitted to invest in a broad range of investment alternatives, subject to the decision-making control of their member directors. These commenters said that amending this section could give credit unions access to professionally-managed, separate-account investments with greater transparency than is afforded via permitted mutual funds. Several other commenters argued that if the FCU Act allows a type of investment, a credit union should be able to consider its purchase based on its balance sheet needs, risk appetite, and safety and soundness position. One commenter suggested that any approved rule changes should be accompanied by similar guidance and training for examiners to help ensure principles-based changes are permitted.

One commenter stated that a principles-based approach may enhance permissible investment options available to credit unions to fund executive and employee benefit programs that help retain and attract quality employees. Another commenter argued that a more principles-based approach will allow credit unions to tailor their investment activities to their individual portfolio needs. The commenter also concluded that allowing further authority will strengthen the board and senior management's ability to consider the best options based on individual circumstances.

Several commenters stated that they support the removal of the prescriptive due diligence requirements applicable toward investment advisors and broker-dealers, given the nature of those business models, and instead requiring credit unions to perform due diligence.

One commenter encouraged the creation of a working group that includes credit union officials and investment advisors. The commenter also suggested the development of an ANPR to provide a foundation for a comprehensive update of part 703. The commenter further recommended that the NCUA consider investment authority for community banks as it reviews new flexibility for credit unions.

Approximately five commenters asked the NCUA to permit credit unions to purchase mortgage servicing rights. Approximately five commenters asked the NCUA to allow credit unions to invest in municipal bonds without limitation. One of these commenters said that the blanket limitations on municipal security exposure only hamper credit unions that are able to appropriately measure, understand, and deal with the risks specific to these investments, which the commenter stated are quite common in other financial institutions. The commenter argued that the ability to take some credit risk in the investment portfolio allows credit unions to maintain needed earnings while reducing other portfolio risks, such as interest rate risk. The commenter stated that some credit unions have suffered material losses and/or lost revenue due to this unnecessary limit. The commenter also said that the limit does not factor risk considerations for general obligation versus revenue securities as is considered in the FCU Act (revenue issues having a limit versus general obligations having none), nor does it consider the effect of other credit enhancement factors, such as sinking fund provisions. One commenter prioritized and strongly supported removing limits on zero-coupon investments. The commenter felt that change would provide credit unions with added flexibility to manage their investment portfolios as they seek to offset risk. Another commenter objected to requiring a minimum of investment grade for all investments and argued it would increase regulatory burden.

One commenter asked the NCUA to expand investment authority to include other asset classes important for risk diversification and portfolio performance. The commenter asked the NCUA to explore authorizing the purchasing of: Investment-grade corporate debt; auto and other consumer debt asset-backed securities; and mortgage servicing rights assets. The commenter argued that for a credit union with sufficient resources, knowledge, systems, and procedures to handle the risks, there is no reason why investing in investment-grade corporate debt and asset-backed securities products should be prohibited. The commenter felt that authorization would promote the overall efficiency of credit union industry investment holdings since these asset classes are important for risk diversification and portfolio performance. The commenter argued that empirical data shows that a reasonable allocation to these assets classes provides diversification benefits such that the return series is less risky, not more risky. The commenter did advise that they are not aware of the legal landscape and the effort authorization would require. The commenter also said that credit unions are already in the mortgage servicing business and many are already large holders of these assets. The commenter noted, however, that many credit unions also may desire to shed the asset, possibly because of concerns over the asset's risk profile or the economic barriers to building an efficient servicing operation. The commenter concluded that allowing for transacting could promote the greater efficiency of the overall system.

Several commenters asked that at least some of the part 703 changes be moved to Tier 1. One of these commenters specifically asked that the recommendations in Subpart A numbers 1, 5, 7, 9, and 16 be moved to Tier 1.

Derivatives Comments: Approximately five commenters explicitly supported removal of the preapproval requirements for derivatives and replacement with a notification requirement. One commenter opposed removal of the pre-approval requirement and replacement with a notice requirement. The commenter felt that at this point it is important for the NCUA to ensure that a credit union is sophisticated enough to purchase derivatives.

One of the supportive commenters commended efforts to widen the rule's applicability and said that the replacement of the application process with a notification requirement and the removal of the volume-based limits are a step forward in promoting a more efficient interest rate risk management process. Several of the supportive commenters also supported the removal of limits on permissible off-balance sheet hedging instruments and expanding eligible collateral to include agency debt. These commenters felt that these changes would allow more credit unions to effectively manage interest rate risk, subject to appropriate supervisory intervention. Another commenter suggested that the authorization of two instruments, Eurodollar futures and interest rate swap futures, would improve hedging efficiency and effectiveness.

One commenter noted that the NCUA has not reviewed the derivatives rule since it was issued in 2014 and asked that review of the rule be made a priority. The commenter said that the combination of the suspended annual regulatory review and the Tier 2 classification defers consideration until

2020 at the earliest. The commenter argued that this designation ''creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies,'' which is one of the criteria of Executive Order 13777. Further, the commenter disagreed that the effort associated with revising this rule is high. The commenter reasoned that the derivatives volume limits appear in a narrow section of part 703 and the invention of these artificial limits created more work than removing them would. The commenter did not understand why, given the Task Force acknowledged that the impact of revising this rule would be high, it is not a Tier 1 proposal—high impact and low effort. The commenter concluded by urging the NCUA to at least fix the weighted average remaining maturity notional (WARMN) limit immediately if the agency delays review of the entire rule.

Several commenters asked the NCUA to immediately eliminate the volume-based limits. One of these commenters argued that the derivatives volume limits, particularly the WARMN, have no parallel in the regulatory practice of any other FFIEC regulator, nor any state regulatory body of which the commenter is aware. The commenter also said that, similarly, the fair value limit threshold of negative 25% of regulatory net worth is arbitrary and is not evidence that a credit union has failed to hedge its assets properly. The commenter said that failure to manage interest rate risk, created by serving members' needs through long-term real estate lending, is the greatest mid- to long- term financial threat facing credit unions, and therefore, the NCUSIF. The commenter felt that credit unions and the NCUSIF have been fortunate to have gone through a sustained period of low interest rates, but luck is not a risk-mitigation strategy. The commenter cited the following to evidence that the need for hedging is significant: 49% of credit union loans are real estate loans, a portfolio that continues to grow at 10% per year; only 15% of credit union mortgage loans are adjustable rate loans; and 33% of credit union assets are long-term, whereas only 4% of credit union deposits are longer than three years. The commenter felt that part 703 already provides the governance and approval framework required to ensure that credit unions do not use derivatives for speculative purposes or in ways that inadvertently create harm to their net worth. The commenter argued that the derivatives volume limits do not reduce risk and said that, to the contrary, they limit the capacity of credit unions to adequately hedge the interest rate risk inherent in their business practice, thereby creating risk to the credit unions and the NCUSIF.

The commenter continued by arguing that tying notional value limits to a small multiple of net worth, as opposed to the amount of long-term assets the FCU holds, fails to match permissible risk mitigation to the risk created by holding those long-term assets. The commenter said that if an FCU has 10% net worth and mixes its swaps between 5 and 10 years to cover the longer-end of its fixed-rate loan portfolio, a 100% WARMN means the FCU cannot have notional swaps of more than 13.33% of assets. The commenter concluded that such a limit is sufficient if the FCU has long-term assets limited to 25–30% of its assets, but it is probably insufficient if an FCU has more long-term assets. As an example, the commenter said that a credit union with 60% of its assets in mortgage loans should be permitted to hedge at least 50% of this amount with long-term swaps, or roughly 25% of assets (or 250% of net worth). The commenter said that if instead the credit union can only hedge 13.33% of assets, as short-term rates rise sooner than assets mature, the credit union's net worth can quickly dissipate, given the fact that a large share of the long-term assets are largely un-hedged. The commenter said that, put more simply, the current WARMN limit means that a credit union with 10% net worth can only hedge 10% of its balance sheet with 10 year pay-fixed interest rate swaps. The commenter argued that this is simply insufficient for the large percentage of credit unions engaged in mortgage lending. The commenter believed that the current WARMN limit dramatically increases interest rate risk for the credit union system overall. The commenter finished by stating that the industry cannot wait two to three more years with nothing more than a hope that unhedged interest rates will remain stable and low.

Two commenters provided detailed comments advocating that the NCUA allow credit unions to invest in mutual funds that have access to the same interest rate risk mitigating derivatives as credit unions.

One of these commenters suggested that mutual funds could be effective in mitigating interest rate risk by engaging in limited derivative activities. The commenter noted that § 703.100(b)(2) of the NCUA's regulations specifically excludes mutual funds that contain derivatives from being a permissible FCU investment. The commenter felt that mutual fund managers with a high level of derivatives expertise and a well-developed derivatives program infrastructure could help mitigate the portion of interest rate risk attributable to credit unions' indirect investments. The commenter stated that mutual funds marketed to credit unions and restricted to FCU permissible investments should be expected to encounter risks similar to those faced by FCUs themselves. The commenter said that those risks, including interest rate risk, are passed on to shareholder credit unions if left unmitigated by the portfolios. The commenter recommended that the NCUA clarify that mutual funds have access to the same interest rate risk mitigating derivatives as credit unions themselves. The commenter believed that this broad, comprehensive view of interest rate risk mitigation would ultimately reduce risk to the NCUSIF. The commenter suggested that the NCUA explicitly state that, in addition to investing in all other FCU-permissible investments, mutual funds that possess an NCUA-approved level of financial sophistication, risk management, and operational capabilities (and market to credit union investors) may invest in permitted derivatives to mitigate the inherent risks of those other FCU-permissible investments. The commenter felt this change could be implemented with a low degree of effort given the regulatory and compliance infrastructure a mutual fund registered under the Investment Company Act of 1940 already has in place, but could have a significant impact given the limited number of credit unions that have been granted derivative authority to date.

The other commenter asked the NCUA to allow credit unions to invest in mutual funds offered by Management Investment Companies (MICs). The commenter said that the MIC would be the entity receiving NCUA derivatives authority as opposed to numerous individual credit unions. The commenter suggested that the NCUA could modify regulations to incorporate requirements for individual credit union investors utilizing any MIC issued funds with derivative authorities (policies, procedures, etc.). According to the commenter, the MIC would be registered under the Investment Company Act of 1940 and the Securities Act of 1933. From this perspective, the commenter said that the MIC would fall under the SEC's regulatory scope. The commenter noted that the existing regulatory framework of the mutual fund industry includes considerable oversight at the time of registration, as well as frequent ongoing reporting requirements. The commenter said that, as they understand it, this reporting includes an annual prospectus, annual and semi-annual reports and other requirements related to various changes which occur during the interim. The commenter concluded that with this approach a credit union could invest in mutual funds that obtained derivatives authority from the NCUA. The commenter said that the intention would not be to create a fund invested entirely in derivatives, but to allow approved MICs the ability to utilize derivative tools to manage the interest rate risk within the fund. The commenter suggested that, as opposed to credit unions investing in individual securities with embedded interest rate, a credit union could utilize a fund as an alternative investment tool. The commenter noted that investing in such a fund would not grant any additional derivative authority to a credit union. The commenter concluded that this solution could: Increase the number of credit unions that could afford to participate and receive the benefits of derivative tools; allow access for credit unions with assets less than $250 million; reduce the cost of participating in the program; utilize the expertise of regulated third parties; provide less of a resource drain on NCUA staff; and retain for the NCUA the direct ability to set and monitor requirements of third-party vendors. The commenter felt that this could be an important risk management tool.

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.

Report 1: Recommend moving § 701.21(i) to part 703 Subpart B—Derivatives Authority to have all options/derivatives authority in one section.

Comments: Two commenters offered general support for the recommendation, noting that they support all conforming clarifications to ensure that regulations are clear, consistent, and where appropriate bundled in relevant and rational sections. One commenter opposed this recommendation and the recommendation to rename 703 Subpart B ''Derivatives and Hedging Authority.'' The commenter felt that the changes add complexity, which is contrary to the intent of the regulatory reform agenda. One commenter asked that it be deprioritized since it is a procedural change that the commenter does not believe will afford significant relief.

Report 2: Upon further consideration and in response to stakeholder feedback the Task Force has moved this recommendation to the top of Tier 2 and the NCUA plans to take action related to this recommendation in 2019. The Task Force has also merged into the investments recommendation the separate recommendation to move § 701.21(i) to part 703 Subpart B—Derivatives Authority so that all options/derivatives authority in one section. The Task Force also emphasizes that the FCU Act prevents the NCUA from offering all of the relief credit unions are seeking in this area. All other aspects of these recommendations remain unchanged.

2. § 701.22—Loan Participations

Addresses: The 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% of the FICU's net worth (unless waived).

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

Category: Remove.

Degree of Effort: Low.

Degree of Impact: High.

Report 1: Remove the prescriptive limit on the aggregate amount of loan participations that may be purchased from one originating lender. Replace with a requirement that 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% of net worth. Eliminates the need for the waiver provision in § 701.22(c).

Comments: Approximately 15 commenters offered support for eliminating the prescriptive limit on the aggregate amount of loan participations that may be purchased from any one originating lender and allowing credit unions to establish limits within a board approved policy. One commenter asked the NCUA to provide coordinated training and guidance for examiners if the recommendation is adopted to avoid an exam defaulting to the previous prescriptive standard.

Another commenter stated that they felt this proposal was well-reasoned. The commenter said that the credit risk associated with an individual loan and the concentration risk from a high aggregate single borrower exposure are more significant risks to the NCUSIF than those associated with overexposure to a properly vetted originating lender. The commenter felt that the current limitation has the adverse and unintended effect of forcing credit unions to pursue loans from new, unfamiliar, and in some cases less qualified and experienced originators simply to avoid an arbitrary cap. The commenter believed that such pursuits result in an inefficient use of internal resources to conduct proper and ongoing originator due diligence, which if not done properly will result in additional risk within a credit union's portfolio. The commenter concluded that allowing each credit union to establish its own sensible policy limit on the aggregate amount of loan participations purchased from a single originating lender will bring needed flexibility and encourage credit unions to customize their participation loan programs to their own size, needs, and appetite for risk.

Another commenter observed that under the MBL rule the NCUA treats certain purchased loan participations as MBLs, including for risk weighting under the RBC rule. The commenter said that if the participation involves a loan to a member of the purchasing credit union, even though the loan was originated by the selling credit union, the interest in the participation must be counted as an MBL by the purchasing credit union. The commenter felt that this treatment is not justified and encouraged the NCUA to reconsider it as it reviews this regulation. The commenter said that, in light of the provisions that apply to loan participations under the MBL rule, the loan participations rule could benefit from the approach proposed for eligible obligations (strip away requirements not required by the FCU Act and consolidate provisions in one place in the regulations).

One commenter noted that the conflict of interest provisions regarding the use of third parties to review a loan participation could be clearer as to when the third party can actually acquire an interest in the loan participation.

Several commenters asked that this be made a priority and moved to Tier 1. One commenter argued that the recommendations require relatively low effort, involve removing prescriptive limits or otherwise streamlining requirements, and would help credit unions manage their balance sheets more effectively. The commenter reasoned that removing unnecessary prescriptive limits and elements that are contrary to modern holistic balance sheet funds management theory would provide some credit unions risk management options that may be too late in three years when the market environment may have changed further.

Report 2: The Task Force recommends adopting the first report's recommendation and prioritization, with an understanding that the FCU Act prevents the NCUA from offering all of the relief credit unions are seeking.

3. § 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.
Report 1: 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.[39]

Comments: Approximately ten commenters offered general support for the recommendations. Several commenters said that the removal of supervisory ratings and limitations beyond the statutory scope will aid credit unions in their member service business by reducing regulatory burden. The commenters felt that providing credit unions with the unlimited ability to purchase, sell, and pledge eligible member obligations is in the spirit of the credit union business model. One commenter opined that current limits to purchasing eligible obligations may only exacerbate the challenges facing credit unions that are struggling for earnings and/or risk diversification and take away much needed opportunities that could otherwise be part of a strategic aspect to cure concerns. The commenter said that waivers take time and rely on examiners recognizing the strategic importance/appropriateness of the request.

One commenter stated that the NCUA has the authority to allow credit unions to purchase whole loans from non-credit unions and argued that credit unions ought to have broad authority to purchase loans from other originators, particularly other federally insured depositories. The commenter argued that purchasing loans from other financial institutions can be a risk-appropriate, well-priced alternative to purchasing low-yielding, over-priced securities.

Another commenter said that, although the recommendation lacks detail, they would support a revised rule that allows for any credit union to purchase an eligible obligation that has been originated by a FICU, regardless of whether it is an obligation of its members. The commenter believed such a rule would not bring new risk into the system, yet would provide purchasing and selling FICUs with more market options, which ultimately would lower the cost for consumers.

Finally, one commenter asked the NCUA to clean up the language in § 701.23, which it believes to be the single most confusing regulation governing FCU powers.

Several commenters also asked that the recommendations be moved to Tier 1. One commenter contended that since the regulation was part of the Office of General Counsel's 2015 regulatory review revisions should be considered in 2018. Another commenter argued that the recommendations require relatively low effort, involve removing prescriptive limits or otherwise streamlining requirements, and would help credit unions manage their balance sheets more effectively. The commenter reasoned that removing unnecessary prescriptive limits and elements that are contrary to modern holistic balance sheet funds management theory would provide some credit unions risk management options that may be too late in three years when the market environment may have changed further.

Report 2: The Task Force recommends adopting the first report's recommendation and prioritization.

4. § 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.
Report 1: Review this regulation to determine if NCUA approval is really needed in purchasing loans and assuming liabilities from market participants other than FICUs. 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 transactions not material to the acquirer) is an inordinate burden for the institution and the NCUA.

Comments: Approximately ten commenters offered general support for the recommendation and felt prior approval an unnecessary burden. Several commenters agreed that requiring agency approval in every case might be an inordinate burden, especially since credit unions already have broad authority to make loans, buy investments and other assets, and enter into transactions that create liabilities. Several commenters said that credit unions should retain the broad flexibility and authority to lend, purchase, and sell assets and liabilities, not subject to NCUA approval in all cases. These commenters welcomed review to determine whether NCUA approvals are necessary in deals between credit unions and other non-FICU market participants.

One commenter argued that preapproval should not be required for a FISCU purchase of liabilities from a non-FICU. The commenter believed that the NCUA's approval for such transactions has never materially contributed to the transaction's safety and soundness and argued that there is no indication that a non-FICU, regulated by a state regulator, is less safe than an FCU. Another commenter argued that nothing in Title II of the FCU Act gives the NCUA the authority to proscribe the loan purchase powers of a FISCU. The commenter asked the NCUA to eliminate the loan seller restrictions governing FISCUs in § 741.8. Finally, several commenters asked that this recommendation be moved to Tier 1.

Report 2: The Task Force recommends adopting the first report's recommendation and prioritization, with an understanding that the FCU Act prevents the NCUA from offering all of the relief credit unions are seeking.

5. § 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.
Report 1: Add a comprehensive third-party due diligence regulation and remove and/or relocate such provisions from other regulations.

Comments: A handful of commenters supported increased clarity and simplification, but cautioned that no new or additional regulatory burdens should be imposed. One of these commenters was concerned that ''comprehensive'' implies additional regulations. This commenter said that vendor due diligence is a priority for credit unions as more services become more complex requiring the use of specialized vendors. However, the commenter felt that the current regulations achieve the NCUA's desired goal of a safe and sound credit union system. One commenter agreed with a review of what they believed to be considerable and burdensome due diligence requirements. This commenter generally agreed with consolidating due diligence requirements in one rule, but did not think the agency should regulate how credit unions meet their due

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

diligence obligations. The commenter said that any revised due diligence rule should not be overly prescriptive, but should focus on allowing credit unions to determine how best to vet third parties.

Several other commenters felt the recommendation did not provide sufficient information to comment. One of these commenters said that they would oppose any recommendation that would increase NCUA authority over third-party vendors. The commenter believed that would significantly increase credit unions' costs. Another of these commenters stated that they have a robust due diligence program and do not support additional regulatory burden aimed at reinventing the third-party services landscape. The commenter argued that such action would run contrary to Executive Order 13777.

Addresses: Third-party servicing of indirect vehicle loans.
Sections: 701.21(h).
Category: Remove.
Degree of Effort: Low.
Degree of Impact: Moderate.
Report 1: 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.

Comments: Approximately ten commenters offered general support for the recommendations. One of these commenters specifically noted that the recommendations will assist compliance. Several commenters offered support, but were concerned that a ''comprehensive'' regulation would lead to overly burdensome requirements. One of these commenters asked the NCUA to focus on clarifying and condensing existing third-party due diligence requirements. Another of these commenters expressed their desire that the NCUA ensure that credit unions maintain control over the direction of their institution and are not intimidated by examiners who may micromanage credit union contracts.

One commenter supported the Tier 1 prioritization. Another commenter asked that once the comprehensive guidance related to third-party management is developed all references to third-party due diligence be consolidated into a single provision requiring credit unions establish policies for managing third-party relationships.

Report 2: Upon further consideration and in response to stakeholder feedback the Task Force has combined these recommendations in Tier 2 to avoid bifurcating rulemakings addressing third-party management.

6. 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.[40]
Report 1: Revise the payout priorities to make unsecured creditors *pari passu* with the NCUSIF. Currently, unsecured creditors are senior to the NCUSIF.

Comments: A handful of commenters generally supported the recommendation. Several of these commenters felt that the recommendation would help the larger credit union industry. One commenter noted that while the recommendation lacked detail, they support it because it could further protect the NCUSIF.

Report 2: Upon further consideration and in response to stakeholder feedback the Task Force has moved this recommendation from Tier 3 to Tier 2. The Task Force believes this recommendation will help to protect the NCUSIF and higher prioritization is appropriate.

iii. Tier 3 (Year 4+)

1. § 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.
Report 1: Enhance federal preemption where possible and appropriate. FCUs 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.

Comments: Approximately ten commenters offered general support for the recommendations. One of these commenters asked the NCUA to clarify the scope of preemption as it applies to FISCUs, not just FCUs. Approximately five of the commenters emphasized the potential beneficial impact on credit unions in multi-state situations. These commenters emphasized that multi-state lenders face regulatory overlap and additional burden. They felt that providing greater clarity on where federal law applies through regulation would provide regulatory relief. One commenter said that any opportunity to ensure and clarify for credit unions the supremacy of federal lending laws is welcome and long overdue. Another commenter said that determining whether a state law is preempted is difficult and they would appreciate any additional or explicit guidance. One commenter emphasized that preemption to facilitate operations can help reduce compliance burdens and produce cost savings. The commenter noted that it supported the NCUA's view of its preemption authority and encouraged the agency to consider preemption broadly while being mindful of consumer and state authority concerns.

Several commenters felt that preemption should be made a priority. These commenters recommended elevating the recommendation to either Tier 1 or Tier 2. A few commenters did caution the NCUA to make sure that federal preemption of applicable state laws and regulations is narrowly tailored so as not to undermine a state supervisory structure. The commenters said that since many credit unions opt for state charters based on their members' business needs, any federal legal preemption should not unduly burden the compliance obligations of credit unions who have not sought the degree of federal oversight imposed.

Report 2: The Task Force recommends adopting the first report's recommendation and prioritization.

2. § 701.37—Treasury Tax and Loan Depositaries and Financial Agents of the Government

Addresses: Treasury tax and loan depositaries and financial agents of the Government.
Sections: 701.37.
Category: Remove/Improve.
Degree of Effort: Moderate.
Degree of Impact: Low.
Report 1: Determine if this regulation remains relevant and necessary.

Comments: Several commenters thought this regulation irrelevant, unnecessary, and no longer applicable.

Report 2: The Task Force recommends eliminating this regulation.

3. Part 714—Leasing

Addresses: Leasing.
Sections: 714.
Category: Improve.
Degree of Effort: Moderate.
Degree of Impact: Undetermined.
Report 1: Review this regulation to identify if any changes or improvements are needed.

Comments: Approximately five commenters encouraged relief to provide flexibility and inspire more leasing. One of these commenters noted

[40] Includes potential efficiencies and/or cost savings for the NCUA.

that the leasing rule was adopted in 2000 and, while there may not be the need for numerous changes, it is appropriate that the NCUA review the rule, which the commenter believed to be overly detailed and oriented toward micromanagement. The commenter stated that, for example, the rule controls the amount of the estimated residual value a credit union may rely upon to satisfy the full payout lease requirement, which is 25% of the original cost of the leased property unless the amount above that is guaranteed. The commenter felt this kind of detail about the mechanics of a leasing program would be more appropriately determined by the credit union.

Several commenters said that credit unions should have the flexibility to run their business as best suits their members' needs. These commenters argued that the leasing regulations should be reduced to allow more credit unions, other than the largest, to engage in this activity if it is appropriate to their business needs. The commenters felt that credit unions are uniquely positioned to provide creative, tailored lease terms that give members greater flexibility in personal leases.

Report 2: The Task Force recommends adopting the first report's recommendation and prioritization.

4. 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.

Report 1: Update this regulation to streamline, facilitate the use of correspondents, and reduce minimum collateral requirements for certain loans/collateral.

Comments: Approximately five commenters provided comments offering support and substantive recommendations. Several commenters stated that they support updates that reduce minimum collateral requirements as well as facilitate the use of correspondents. As detailed more fully below, one commenter provided a number of substantive recommendations.

The commenter said that for the past several years, the corporate credit union community has worked closely with the CLF in order to provide operational efficiency with advances, repayments, and collateral management through a correspondent agreement with each corporate credit union. As such, the commenter asked that the NCUA amend § 725.2 to include a definition of a correspondent. The commenter also asked the NCUA to modify § 725.19 to reflect a market-based approach to collateral values. The commenter noted that current CLF collateral requirements call for a blanket net book value equal to at least 110% of advances and for certain types of collateral, *i.e.* marketable securities, CLF collateral values compare unfavorably to the Federal Reserve Board discount window and the Federal Home Loan Banks. Additionally, the commenter requested that the NCUA eliminate various references to dates in part 725 that are outdated.

The commenter also suggested the NCUA consider amending § 725.4(a)(2), which requires an agent member to purchase capital stock for all of its member natural person credit unions, in conjunction with a change to § 304(b)(2) of the FCU Act,[41] to allow the purchase of capital stock on behalf of a select group of member credit unions. The commenter noted that as corporate credit unions recapitalized their balance sheets following the crisis, the purchase of CLF capital stock for all member credit unions was thought to be prohibitively expensive by the corporate community. The commenter believed that the suggested changes would enable more natural person credit unions to access liquidity from the CLF during periods of tight liquidity.

The commenter also thought that corporate credit unions should have the ability to borrow directly from the CLF for liquidity purposes, and requested that the NCUA consider modifications to part 725 in conjunction with efforts to modernize the FCU Act in order to allow CLF advances directly to corporate credit unions. The commenter noted that during the financial crisis the CLF instituted several programs, including the Credit Union System Investment Program, which provided access to liquidity for select corporate credit unions. The commenter said that these programs required an advance from the CLF to a natural person credit union, following which the natural person credit union invested proceeds of the advance in a note issued by the corporate credit union and guaranteed by the NCUSIF pursuant to the Temporary Corporate Credit Union Liquidity Guarantee Program. The commenter argued that, while these transactions facilitated liquidity to corporate credit unions, the transactions were complex and costly.

The commenter also noted that they object to § 306(a)(1) of the FCU Act,[42] which reads in part ''the Board shall not approve an application for credit the intent of which is to expand credit union portfolios.'' The commenter argued that all advances expand a credit union's portfolio and the determination of whether or not an advance serves a liquidity purpose should be left up to the CLF.

A separate commenter asked the NCUA to review the authority for the CLF as well as its role and function. The commenter opined that the CLF was designed to be an important and useful facility that provides access to liquidity for those credit unions that could demonstrate the need and repay their borrowings. The commenter also stated that the CLF provides credit unions with a reliable resource for contingency funding needs. The commenter said that despite the CLF's past role, it currently has only 269 regular members and has no loans. The commenter believed that the CLF can be a useful facility that credit unions may utilize for liquidity when interest rates begin to rise again and asked the NCUA to work with Congress to restructure the CLF, ease requirements for credit unions to be members, and extend the range of borrowing opportunities.

One commenter specifically supported the Tier 3 categorization. Another commenter, citing the CLF's role during the financial crisis, felt part 725 warrants a higher priority.

Report 2: The Task Force recommends adopting the first report's recommendation and prioritization, with an understanding that the FCU Act prevents the NCUA from offering all of the relief credit unions are seeking.

5. Part 741—Requirements for Insurance

Addresses: Maximum borrowing authority.

Sections: 741.2.

Category: Remove.

Degree of Effort: Low.

Degree of Impact: Low.

Report 1: Remove the 50% borrowing limit for FISCUs and the related waiver provision. State law should govern in this area.

Comments: Approximately five commenters offered general support for the recommendation. One commenter specifically supported the Tier 3 categorization.

Report 2: The Task Force recommends adopting the first report's recommendation and prioritization.

[41] 12 U.S.C. 1795c(b)(2).

[42] *Id.* § 1795e(a)(1).

6. 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.
Report 1: Remove as no longer necessary and not consistent with GAAP.[43]
Comments: Several commenters agreed with the recommendation. One commenter stated that a low prioritization is appropriate.
Report 2: The Task Force recommends adopting the first report's recommendation and prioritization.

7. 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.
Report 1: 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.
Comments: Approximately 15 commenters asked the NCUA to reform the Bank Secrecy Act (BSA) regulations and suggested the NCUA work with the Department of the Treasury and other regulators to support meaningful changes to minimize the costs and problems encountered in meeting BSA and anti-money laundering (AML) requirements. Several other commenters emphasized that BSA and AML compliance remain substantial issues and urged the NCUA to minimize compliance burdens. Another commenter noted that BSA compliance is a huge burden in paying for systems, training, and personnel. Several commenters also asked the NCUA to work with the Treasury and the Financial Crimes Enforcement Network (FinCEN) to eliminate burden from duplication in BSA requirements.

Approximately five commenters asked that the threshold for Currency Transaction Reports (CTRs) and Suspicious Activity Reports (SARs) be raised to a minimum of $20,000 to provide relief, ensure that only effective useful data is transmitted, and allow field examiners to provide consistent guidance during exams. Commenters noted that the current threshold has remained unchanged since 1972 and that the threshold would be over if $50,000 if adjusted for inflation. Several commenters requested that the SAR and CTR forms be combined into one form submission.

Another commenter asked that the NCUA promote better communication over mandatory reporting. The commenter stated that credit unions often file defensive SARs, which are of little use to law enforcement, to avoid compliance failures. The commenter believed reforms to promote open communication between law enforcement and credit unions would allow the system to function like Congress intended. The commenter also argued that enforcement of FinCEN regulations by the NCUA, without direct law enforcement feedback, is cumbersome and should be changed.

Another commenter suggested significantly curtailing customer due diligence requirements and eliminating redundant SARs filings for corporate credit unions. One commenter suggested that FinCEN and federal law enforcement should consider awarding a percentage, such as 10%, of fines or awards to credit unions in civil and criminal actions when those institutions' filings were instrumental in a case. The commenter believed that incentivizing better filings would result in better quality SARs, greater compliance, and the alleviation of some of the high costs of BSA compliance.

One commenter asked the NCUA to relax its requirement for monthly reporting of SAR activity to the board. The commenter stated that there is no statutory requirement that mandates monthly reporting and asked the NCUA to allow credit unions to report SAR filings promptly to the board, with promptly defined as the next regularly scheduled board meeting or at least quarterly.

Approximately five commenters offered support for a working group. Another commenter specifically supported the use of an ANPR. Several commenters said the NCUA should persuade FinCEN, other financial regulators, and Congress to reform some of the BSA inefficiencies.

Approximately 15 commenters asked that part 748 be made a priority. One commenter noted their appreciation for the NCUA's effort to reform BSA compliance procedures, but articulated a belief that substantive changes must originate from FinCEN and Congress. Another commenter asked the NCUA to explain all exam policies and priorities, particularly new ones, and provide the information in one ''examination issues'' location on the agency's website and in agency documents, such as letters to credit unions and examiners' guides.

Report 2: The Task Force recommends adopting the first report's recommendation and prioritization. Further, the Task Force emphasizes that the NCUA has limited authority in this area. Many of the changes requested by commenters fall outside of the NCUA's purview. The Task Force does note that the NCUA continues to participate in interagency work in this area.

8. 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.
Report 1: 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.
Comments: Approximately 15 commenters stated that the record retention guidelines are unclear and conflicting. One of these commenters noted that, while the rule states that any records not explicitly mentioned as vital records do not need to be maintained permanently and can be destroyed periodically as determined by the credit union, other parts of the NCUA's regulations have record retention requirements. The commenter included two examples. First, under part 749 certain supervisory committee documents are not vital records and are subject to periodic destruction; yet under part 715 certain supervisory committee documents must be retained until the completion of the next verification process. Second, merger documents are not explicitly listed as permanent records in part 749; however, the NCUA's Credit Union Merger Procedures and Merger Forms Manual states that the continuing credit union must maintain all documents and records related to a merger. Another commenter agreed with the review and noted that some retention requirements lack a termination date. Several commenters asked the NCUA to update part 749 to reflect and adapt to technology record maintenance changes.

Approximately 15 commenters asked that changes to this regulation be made

[43] There are 11 FISCUs from 8 different states that report a total of $4.4 million in this account on the Call Report as of December 31, 2016.

a priority. Conversely, one commenter felt the changes would have negligible benefit and agreed with the Tier 3 prioritization. Several commenters asked the NCUA to develop a working group. One commenter specifically supported using an ANPR to frame the numerous issues.

Report 2: The Task Force recommends adopting the first report's recommendation and prioritization.

iv. Other Comments

1. Timeline

Several commenters asked that the four year timeline be accelerated. One commenter agreed with reassessing the timelines based on credit union feedback. Another commenter asked the NCUA to consider the implementation timelines for these changes, noting that credit unions and the NCUA will require substantial transition time to conform to new or changed regulations. The commenter asked that examiner training be emphasized to avoid implementation inconsistencies.

2. Prioritizations Generally

One commenter asked the Task Force to use a taxonomic system with Tier 1, Class A regulations receiving highest priority, followed by Tier 1, Class B regulations, and so forth.

3. Other

Other suggestions included: Co-locating all rules applicable to FISCUs; amendments to the definition of loan-to-value in part 723; formation of a Credit Union Advisory Council; flood insurance amendments; suggestions for how to better comply with Executive Orders 13771 and 13777; investment in fintech companies; clarity and parity for financing of pre-sold construction homes; changes to the PALs program; and more.

d. 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.
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.

INVESTMENTS—PART 703 SUBPART A—Continued

Item	Change	Rationale
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 low risk.
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)—(Muni 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)**	

INVESTMENTS—PART 703 SUBPART A—Continued

Item	Change	Rationale
	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.
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.

DERIVATIVES—PART 703 SUBPART B AND RELATED ITEMS—Continued

Item	Change	Rationale
10	**"Remove" Pilot Program Participants**	
	Change 703.113	Not relevant anymore.

By the National Credit Union Administration Board on December 13, 2018.

Gerard Poliquin,

Secretary of the Board.

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