soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[18]

The FDIC believes that this final rule does not impose new reporting, disclosure, or other requirements, and likely instead reduces such burdens by allowing Electing CBOs to avoid calculating and reporting tier 2 capital, as would be required under the current Real Estate Lending Standards. Therefore, the FDIC believes that it is not necessary to delay the effective date beyond the 30-day period provided in the APA.

E. Plain Language

Section 722 of the GLBA [19] requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. The FDIC sought to present the final rule in a simple and straightforward manner and did not receive any comments on the use of plain language in the proposal.

F. Congressional Review Act

For purposes of the Congressional Review Act, OMB makes a determination as to whether a final rule constitutes a ''major'' rule. If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

The OMB has determined that the final rule is not a major rule for purposes of the Congressional Review Act, and the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

[18] *Id.* at 4802(b).

[19] 12 U.S.C. 4809.

List of Subjects in 12 CFR Part 365

Banks, Banking, Mortgages, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends part 365 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 365—REAL ESTATE LENDING STANDARDS

■ 1. The authority citation for part 365 continues to read as follows:

Authority: 12 U.S.C. 1828(o) and 5101 *et seq.*

■ 2. Amend appendix A to subpart A by revising the section titled ''Loans in Excess of the Supervisory Loan-to-Value Limits'' to read as follows:

Appendix A to Subpart A of Part 365—Interagency Guidelines for Real Estate Lending Policies

* * * * *

Loans in Excess of the Supervisory Loan-to-Value Limits

The agencies recognize that appropriate loan-to-value limits vary not only among categories of real estate loans but also among individual loans. Therefore, it may be appropriate in individual cases to originate or purchase loans with loan-to-value ratios in excess of the supervisory loan-to-value limits, based on the support provided by other credit factors. Such loans should be identified in the institution's records, and their aggregate amount reported at least quarterly to the institution's board of directors. (See additional reporting requirements described under ''Exceptions to the General Policy.'')

The aggregate amount of all loans in excess of the supervisory loan-to-value limits should not exceed 100 percent of total capital.[4] Moreover, within the aggregate limit, total loans for all commercial, agricultural, multifamily or other non-1-to-4 family residential properties should not exceed 30 percent of total capital. An institution will come under increased supervisory scrutiny as the total of such loans approaches these levels.

In determining the aggregate amount of such loans, institutions should: (a) Include all loans secured by the same property if any one of those loans exceeds the supervisory loan-to-value limits; and (b) include the recourse obligation of any such loan sold with recourse. Conversely, a loan should no longer be reported to the directors as part of aggregate totals when reduction in principal or senior liens, or additional contribution of collateral or equity (*e.g.,* improvements to the real property securing the loan), bring the loan-to-value ratio into compliance with supervisory limits.

* * * * *

[4] For the purposes of these Guidelines, for state non-member banks and state savings associations, ''total capital'' refers to the FDIC-supervised institution's tier 1 capital, as defined in § 324.2 of this chapter, plus the allowance for loan and leases losses or the allowance for credit losses attributable to loans and leases, as applicable. The allowance for credit losses attributable to loans and leases is applicable for institutions that have adopted the Current Expected Credit Losses methodology.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on October 21, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–23381 Filed 10–26–21; 8:45 am]

BILLING CODE 6714–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700, 701, 703, 704, and 713

RIN 3133–AF32

CAMELS Rating System

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (the Board) is updating the NCUA's supervisory rating system from CAMEL to CAMELS by adding the ''S'' (Sensitivity to Market Risk) component to the existing CAMEL rating system and redefining the ''L'' (Liquidity Risk) component. The benefits of adding the ''S'' component are to enhance transparency and allow the NCUA and federally insured natural person and corporate credit unions to better distinguish between liquidity risk (''L'') and sensitivity to market risk (''S''). The addition of ''S'' also enhances consistency between the supervision of credit unions and financial institutions supervised by the other banking agencies. The effective date of the rule will be April 1, 2022. The Board plans to implement the addition of the ''S'' rating component and a redefined ''L'' rating for examinations and contacts started on or after April 1, 2022.

DATES: The rule becomes effective April 1, 2022.

FOR FURTHER INFORMATION CONTACT: Thomas Fay, Director of Capital Markets at (703) 518–1179 or Robert Bruneau, Senior Capital Markets Specialist at (703) 945–2491, Office of Examination and Insurance; or Marvin Shaw, Senior Staff Attorney, Office of General Counsel, at (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Legal Authority and Background

The Board is issuing this final rule pursuant to its authority under the Federal Credit Union Act (the Act).[1] Under the Act, the NCUA is the chartering and supervisory authority for federal credit unions (FCUs) and the federal supervisory authority for federally insured credit unions (FICUs).[2] The Act grants the NCUA a broad mandate to issue regulations governing both FCUs and FICUs. Section 120 of the Act is a general grant of regulatory authority and authorizes the Board to prescribe regulations for the administration of the Act.[3] Section 209 of the Act is a plenary grant of regulatory authority to the NCUA to issue regulations necessary or appropriate to carry out its role as share insurer for all FICUs.[4] The Act also includes an express grant of authority for the Board to subject federally chartered central, or corporate, credit unions to such rules, regulations, and orders as the Board deems appropriate.[5]

As part of its supervisory activities, the NCUA adopted the CAMEL rating system in 1987.[6] Through CAMEL ratings, the NCUA sought to account for and reflect all significant financial, operational, and management factors that examiners assess in their evaluation of a credit union's performance and risk profile. Under this system, as specified in the 2007 Letter to Credit Unions (LCU), the NCUA assigns each credit union a composite CAMEL rating and five component ratings based on the agency's evaluation of a credit union's financial condition and operations.[7] The five components address a credit union's:

- Capital adequacy;
- Asset quality;
- Management;
- Earnings; and
- Liquidity and asset liability management.

Examiners assign composite and component CAMEL ratings using a scale that ranges from ''1'' to ''5.'' The highest rating is a ''1,'' indicating the strongest performance and risk management practices, and the least degree of supervisory concern. The lowest rating is a ''5,'' indicating the weakest performance, inadequate risk management practices, and the highest degree of supervisory concern. Examiners rate these components based upon qualitative and quantitative factors using their professional judgement.

In 1997, members of the Federal Financial Institutions Examination Council (FFIEC), with the exception of the NCUA, proposed and subsequently adopted revisions to the Uniform Financial Institutions Rating System (UFIRS).[8] The FFIEC released a Policy Statement at that time to reaffirm the five CAMEL rating system components and added a sixth component, Sensitivity to Market Risk (''S''), to address price and interest rate risks (IRR).[9] The NCUA opted not to use the ''S'' component based on the relative lack of complexity in the consolidated balance sheets of credit unions at the time. Instead, the NCUA retained its existing CAMEL rating system.

However, since 1997, credit union balance sheets have grown larger and more complex. For example, the credit union industry significantly increased the percentage of holdings in mortgage related assets to total assets from 19 percent in 1997 to 45 percent in June 2021. Accordingly, the NCUA has made several modifications to the CAMEL rating system since 1997. These involved changes to financial ratios, adding and subsequently eliminating a CAMEL matrix, accommodating the adoption of Prompt Corrective Action, and incorporating the NCUA's risk-focused exam approach.[10 11]

As balance sheets of natural person credit unions have become larger and more complex, the NCUA has consistently provided supervision and guidance regarding IRR to the credit union industry. The NCUA also advised credit unions that IRR was a supervisory priority from 2012 through 2019.[12]

In 2012, the Board implemented regulations that introduced standards and expectations affecting examiner procedures and the NCUA's IRR assessment requirements. The NCUA's IRR rule became effective for credit unions in September 2012. The rule requires insured credit unions that have more than $50 million in assets to maintain a written IRR policy and an effective IRR management program.[13]

In April 2014, the NCUA also finalized its derivatives rule and subsequently amended it in May 2021. The amendments modernize the NCUA's derivatives rule and make it more principles-based, while retaining key safety and soundness components. The changes provide more flexibility for qualified FCUs to manage IRR through the use of derivatives.[14]

In January 2017, the NCUA also implemented its revised IRR supervision program incorporating the regulatory requirements from § 741.3(b)(5) (IRR) and subpart B to part 703 (derivatives), enhancing examiner guidance, improving the consistency of IRR ratings, and identifying outlier credit unions with excessive IRR levels.[15]

II. Proposed Rule

On January 14, 2021, the Board approved issuing a notice proposing to amend the existing CAMEL rating system by adding an ''S'' component to assess sensitivity to market risk and modify the ''L'' component to include only liquidity evaluation content and rating criteria.[16] The Board explained that these changes would provide greater clarity and transparency regarding credit unions' sensitivity to market and liquidity risk exposures. The Board further explained that the proposed changes would make the NCUA's rating system more consistent with the other banking agencies' rating systems at the federal and state levels.[17]

In support of the proposal, the Board explained that changes in the size and complexity of FICUs warranted the

[1] 12 U.S.C. 1751 *et. seq.*

[2] 12 U.S.C. 1752–1775.

[3] 12 U.S.C. 1766(a).

[4] 12 U.S.C. 1789.

[5] 12 U.S.C. 1766(a).

[6] NCUA LCU No. 93 (September 25, 1987).

[7] NCUA LCU 07–CU–12 (December 2007).

[8] At the time, the FFIEC was comprised of the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve (Federal Reserve), and the Office of the Comptroller of the Currency (OCC), the NCUA, and the Office of Thrift Supervision, which merged into OCC as a result of the Dodd Frank Wall Street Reform and Consumer Protection Act. *See* Section 312 of Public Law 111–203.

[9] 62 FR 752, (Jan. 6, 1997).

[10] In 1998, Congress enacted the Credit Union Membership Access Act (Pub. L. 105–219, 112 Stat. 913 (1998)), which amended the Act to require the NCUA to adopt, by regulation, a system of prompt corrective action consisting of minimum capital standards and corresponding remedies to improve the net worth of federally insured ''natural person'' credit unions.

[11] NCUA LCU 00–CU–08 (November 2000)—superseded by NCUA LCU 03–CU–04; NCUA LCU 07–CU–12 (December 2007); NCUA LCU 03–CU–04 (March 2003)—superseded by NCUA LCU 07–CU–12; NCUA LCU 19–CU–01 (January 2019).

[12] *See, e.g.,* NCUA LCU 19–CU–01 (January 2019).

[13] 77 FR 5155 (Feb. 2, 2012). *See* 12 CFR 741.3, 12 CFR 741, app. A.

[14] 86 FR 28241 (May 26, 2021).

[15] NCUA LCU 16–CU–08 (October 2016).

[16] 86 FR 13494.

[17] The banking regulators (Federal Reserve Board, FDIC, and OCC) each include the ''S'' component to evaluate sensitivity to marketplace risk. In addition, as of January 2021, 24 SSAs have adopted the ''S'' component.

changes and that increased complexity typically requires greater focus on interest rate and liquidity risk profiles.

The Board noted that separating the ''S'' and ''L'' component ratings will allow NCUA to better:

- Monitor sensitivity to market and liquidity risks in the credit union system;
- Communicate specific concerns to individual credit unions; and
- Allocate resources.

III. Final Rule and Public Comments on the Proposed Rule

The Board solicited public comments over a 60-day comment period and received 16 comments. Commenters included credit union trade associations, state credit union leagues, an organization of state credit union supervisors, credit unions, and individuals. Most commenters supported the proposal. Several expressed concern about the proposal's implementation, particularly about the associated compliance costs and the need for consistent application across the NCUA regions and examiners.

As noted previously, commenters generally supported the proposal, stating that it would provide more precise supervision of credit unions. One trade association stated that the change will add clarity and transparency. That commenter also stated that this change recognizes that there is a difference between market sensitivity and liquidity risk, so separating the two components makes sense even if they are interrelated. Additionally, several commenters stated that the proposed change would enhance consistency with other financial institution rating systems, specifically for FDIC-insured financial institutions. These commenters stated the change would enhance consistency with several state credit union regulators who already include the ''S'' in their rating systems. They also said the change will allow examiners to better communicate specific concerns to credit unions.

A few commenters stated that the proposal added burden without any corresponding benefit and thus is unwarranted and unnecessary. One commenter believed that the amendment is not necessary because other components of CAMEL, including Capital, Asset Quality, and Liquidity, already evaluate market risk. This commenter stated that the proposal adds significant burden on both credit unions and examiners and is not necessary or valuable.

A. Comments Regarding Adopting the ''S'' Component

One commenter requested that the NCUA release details about the agency's expectations of credit unions meeting any new standards for the ''S'' component and what this change will mean for the examination process.

The NCUA will issue an updated Letter to Credit Unions that explains the criteria and standards for the ''S'' component and how this change will be incorporated into the examination process. Additionally, the NCUA Examiner's Guide will integrate the extensive discussion and tables set forth in the proposal that detailed the Board's expectations.

With respect to the ''S'' component, the proposal noted that sensitivity to market risk reflects the exposure of a credit union's current and prospective earnings level and economic capital position arising from changes in market prices and interest rates. The Board noted that effective risk management programs include comprehensive IRR policies, appropriate and identifiable risk limits, clearly defined risk mitigation strategies, and a suitable governance framework. The Board further notes that Sensitivity to Market Risk ratings will be based on the proposed ''S'' component evaluation content and rating criteria.

One commenter recommended that the ''S'' component should be examined by looking at asset liability modeling and engagement levels of the asset and liability management, loans, deposits, and investment committees. This commenter also stated that it would be beneficial to review the change in Net Economic Value of equity.

The Board agrees that these factors should be considered in evaluating the ''S'' component and notes that examiners will continue to review them in their evaluation of IRR. The NCUA's LCU 16–CU–08, Revised Interest Rate Risk Supervision, and the related guidance that the NCUA implemented in 2017, was designed with the prospect of adding the ''S'' component and expressly details how the NCUA assesses IRR.

One commenter requested that the Board specifically include a definition of ''market risk'' as it relates to various sensitivity factors. That commenter stated that the term ''market risk'' is used quite frequently in the descriptions of the proposed factors, but the term ''market risk'' is not clearly defined in the proposal.

After reviewing the NCUA's Supervisory Guidance, Examiner's Guide, and regulations, the Board has determined that it is unnecessary to include a definition of ''market risk'' in the Code of Federal Regulations (CFR). Additionally, no discrete part of the NCUA's regulations addresses market risk in a dedicated section. Further, the proposal's sensitivity to market risk evaluation criteria clearly states that market risk represents the exposure of a credit union's current and prospective earnings and economic capital arising from changes in market prices and of interest rates. Additionally, the description of market risk is highly consistent with how other prudential regulators, such as the FDIC, Federal Reserve Board, and the OCC define market risk in their instructions to examiners.[18] Therefore, the Board has determined the definition of market risk can effectively be addressed in an Letter to Credit Unions that will explain the CAMELS rating system and replace the existing letter.[19]

A commenter sought clarity to better understand the methodology underlying the direct assessment of IRR. That commenter stated that the thresholds for assessment are a key aspect to maintaining a sound interest rate hedging strategy and managing interest rate sensitivity. The commenter asked if the NCUA will be able to provide context for differentiating a rise in interest rates from an ''adverse'' rise in interest rates, or from a ''materially adverse'' IRR exposure.

The NCUA has previously provided this type of guidance about the methodology underlying the direct assessment of IRR in its LCU 16–CU–08, Revised Interest Rate Risk Supervision, which details how NCUA examiners assess IRR. Credit unions are encouraged to review this guidance.

The Board has determined that updating the NCUA's supervisory rating system from CAMEL to CAMELS by adding the ''S'' (Sensitivity to Market Risk) component to the existing CAMEL rating system as proposed and listed in the following table is appropriate and consistent with the NCUA's overall mission to ensure the safety and soundness of FICUs.[20]

''S'' Component for Sensitivity to Market Risk

The sensitivity to market risk reflects the exposure of a credit union's current and prospective earnings and economic

[18] *https://www.fdic.gov/regulations/safety/manual/section7-1.pdf* (Section 7.1) (July 2018) *https://occ.gov/publications-and-resources/publications/comptrollers-handbook/files/bank-supervision-process/pub-ch-bank-supervision-process.pdf* (June 2018).

[19] NCUA LCU 07–CU–12 (December 2007).

[20] 12 CFR 741.3(b)(5).

capital arising from changes in market prices and interest rates. Effective risk management programs include comprehensive interest rate risk policies, appropriate and identifiable risk limits, clearly defined risk mitigation strategies, and a suitable governance framework.[21]

Sensitivity to Market Risk ratings are based on, but not limited to, the following evaluation factors:

- Sensitivity of a credit union's current and future earnings and economic value of capital to adverse changes in market prices and interest rates;
- Management's ability to identify, measure, monitor, and control exposure to market risk considering a credit union's size, complexity, and risk profile; and
- The nature and complexity of interest rate risk exposure.

The Board has determined that updating the NCUA's supervisory rating system from CAMEL to CAMELS by adding the ''S'' component to the existing CAMEL rating system to evaluate sensitivity to market risk and adding rating criteria as outlined in the proposed rule, along with the added evaluation factor examples, is appropriate and consistent with the NCUA's overall mission to ensure the safety and soundness of FICUs.[22] The Board notes that the updated rating system is based on, and is consistent with, the UFIRS system utilized by the other prudential regulators. Nevertheless, the Board made certain minor, non-substantive modifications to the rating descriptions to clarify and better reflect supervision of credit unions. Notwithstanding this slight divergence from UFIRs, the Board has determined that the NCUA's revised rating system is consistent with the other financial supervisors.

Examiners will rate a credit union's ''S'' CAMELS rating component on a scale of ''1'' to ''5''.

''S'' rating	Description
1	• Risk management practices and controls for market risk are strong for the size and sophistication of the credit union, and the level of market risk it has accepted. • There is minimal potential for market price or interest rate changes to create a material adverse effect on the credit union's earnings performance or capital position. • The credit union has more than sufficient earnings and capital to support the level of market risk taken by the credit union.
2	• Risk management practices and controls for market risk are satisfactory for the size and sophistication of the credit union, and the level of market risk it has accepted. • There is only moderate potential for market price or interest rate changes to create a material adverse effect on the credit union's earnings performance or capital position. • The credit union has sufficient earnings and capital to support the level of market risk taken by the credit union.
3	• Risk management practices and controls for market risk are not fully commensurate with the size and sophistication of the credit union, or the level of market risk it has accepted. • There is high potential for market price or interest rate changes to create a material adverse effect on the credit union's earnings performance or capital position. • The level of market risk taken is high in relation to the credit union's earnings or capital.
4	• Risk management practices and controls for market risk are significantly deficient given the size and sophistication of the credit union, or the level of market risk it has accepted. • There is high potential for market price or interest rate changes to threaten the viability of the credit union. • The level of market risk taken is excessive in relation to the credit union's earnings or capital.
5	• The level of market risk taken or exposure to market price or interest rate changes is an imminent threat to the credit union's viability.

B. Comments Regarding Modifying the ''L'' Component

One commenter stated that liquidity should be evaluated with respect to how a credit union maintains access to non-member funds and tracking member balances as well as cash flow projections and stress testing.

The NCUA agrees that a liquidity review should include these items. The Board notes that the proposal's liquidity evaluation content is comprehensive and addresses liquidity sources as well as liquidity measurements under various scenarios. However, the Board is adding examples of liquidity evaluation factors to the evaluation content to enhance the clarity of its expectations and consistency with UFIRS.

The Board has determined that updating the NCUA's supervisory rating system from CAMEL to CAMELS by modifying the ''L'' (Liquidity Risk) component in the existing CAMEL rating system to include only liquidity evaluation content and rating criteria as outlined in the proposed rule, along with the added evaluation factor examples, is appropriate and consistent with the NCUA's overall mission to ensure the safety and soundness of FICUs.[23] The following discussion and table address the liquidity evaluation content and rating criteria.

''L'' Component for Liquidity Risk

In evaluating the adequacy of a credit union's liquidity profile, examiners consider the current and prospective sources of liquidity compared to funding needs and the adequacy of liquidity risk management relative to a credit union's size, complexity, and risk profile. A credit union's liquidity risk management practices should ensure the credit union maintains sufficient liquidity to timely meet its financial obligations and member share and loan demands. These practices should reflect the credit union's ability to manage unplanned changes in funding sources, respond to changes in market conditions affecting its ability to quickly liquidate assets with minimal loss, ensure liquidity is maintained at a reasonable cost, and limit reliance on funding sources that may not be available in times of financial stress or adverse changes in market conditions.[24]

A credit union's liquidity risk management practices should also be commensurate with the complexity of the balance sheet and its capital adequacy. This includes evaluating the reporting mechanisms in place to monitor and control risk, management's

[21] *https://publishedguides.ncua.gov/examiner/Pages/default.htm#ExaminersGuide/IRR/_IRR_Overview.htm%3FTocPath%3DInterest%2520Rate%2520Risk%7C____0.*

[22] 12 CFR 741.12.

[23] 12 CFR 741.12.

[24] *https://publishedguides.ncua.gov/examiner/Pages/default.htm#ExaminersGuide/Liquidity/Liquidity.htm%3FTocPath%3DLiquidity%7C____0.*

response when risk exposure approaches or exceeds the credit union's risk limits, and the prescribed corrective action taken when necessary.[25]

Liquidity ratings are based on, but not limited to, the following evaluation factors:

• The adequacy of liquidity sources compared to present and future needs and the ability of the credit union to meet liquidity needs without adversely affecting its operations or condition;

• The availability of assets readily convertible to cash without undue loss;

• Access to sources of funding;

• The level of diversification of funding sources, both on- and off-balance sheet;

• The degree of reliance on short-term, volatile sources of funds to fund longer term assets;

• The trend and stability of deposits; and

• The capability of management to properly identify, measure, monitor, and control the credit union's liquidity position, including the effectiveness of funds management strategies, liquidity policies, management information systems, and contingency funding plans.

The Board has determined that updating the NCUA's supervisory rating system from CAMEL to CAMELS by modifying the ''L'' (Liquidity Risk) component in the existing CAMEL rating system to include only liquidity evaluation content and rating criteria as outlined in the proposed rule, along with the added evaluation factor examples, is appropriate and consistent with the NCUA's overall mission to ensure the safety and soundness of FICUs.[26] The Board notes that the updated rating system is based on, and is consistent with, the UFIRS system utilized by the other prudential regulators. Nevertheless, the Board made certain minor, non-substantive modifications to the rating descriptions to clarify and better reflect supervision of credit unions. Notwithstanding this slight divergence from UFIRs, the Board has determined that the NCUA's revised rating system is consistent with the other financial supervisors.

Examiners will rate a credit union's ''L'' CAMELS component rating on a scale of ''1'' to ''5''.

"L" rating	Description
1	• The credit union has strong liquidity levels. • The credit union has well-developed funds management policies and practices. • The credit union has reliable access to sufficient sources of funds on favorable terms to meet present and anticipated liquidity needs.
2	• The credit union has satisfactory liquidity levels. • The credit union has adequate funds management policies and practices. • The credit union has access to sufficient sources of funds on acceptable terms to meet present and anticipated liquidity needs.
3	• The credit union has low liquidity levels. • The credit union's funds management policies and practices are not fully commensurate with its size and complexity, or the liquidity risks it has taken. • The credit union may lack ready access to funds on reasonable terms.
4	• The credit union has inadequate liquidity levels. • The credit union's funds management policies and practices are inadequate given its size and complexity, or the liquidity risks it has taken. • The credit union is likely not able to obtain sufficient funds on reasonable terms to meet liquidity needs.
5	• Liquidity levels are so deficient there is an imminent threat to the credit union's viability. • The credit union requires extraordinary external financial assistance to meet maturing obligations or other liquidity needs.

C. Comments Regarding Technical Amendments in the Code of Federal Regulations

The Board did not receive comments regarding the proposed technical amendments to the CFR. The CAMEL rating system is not in a separate section or part in the NCUA's regulations, but references to CAMEL appear in several parts in the CFR. NCUA regulations regularly refer to CAMEL composite ''1'' or ''2'' rated credit unions, which indicate the ability to safely support additional regulatory flexibility; or CAMEL composite ''4'' or ''5'' rated credit unions, which warrant increased regulatory scrutiny. The Board has determined that amending the term CAMEL to CAMELS in the following sections in the CFR as proposed is necessary with the decision to adopt the CAMELS rating system for both natural persons and corporate FICUs.

- § 700.2 definition of Troubled condition
- § 701.14 Change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition
- § 701.23 Purchase, sale, and pledge of eligible obligations
- § 703.13 Permissible investment activities
- § 703.14 Permissible investments
- § 703.108 Eligibility
- § 704.4 Prompt corrective action [for corporate credit unions]
- § 713.6 Fidelity Bond and Insurance Coverage for FICUs

D. Other Comments

Several commenters supported the proposal, stating it would enhance uniformity with other regulators. One commenter requested that the NCUA should adopt the UFIRS, which was approved by the FFIEC and used by the OCC, FDIC, the Federal Reserve Board, and many State Supervisory Authorities. The same commenter further suggested that the Board should keep its rating descriptions consistent with the rating descriptions for the ''L'' and ''S'' ratings used by other banking agencies by adopting the UFIRS in its entirety, stating the agency would benefit from not having to establish and maintain a separate authoritative framework for its examination rating system. The commenter stated that using the same CAMELS terminology but with different definitions from the UFIRS would create unnecessary confusion, impair a common understanding of the condition of financial institutions, create a disconnect with FFIEC guidance, and

[25] *https://www.ncua.gov/files/letters-credit-unions/LCU2013-10-InteragencyPolicyStatementFunding.pdf.*

[26] 12 CFR 741.12.

impose additional regulatory costs and burdens on credit unions.

The NCUA initially modeled its CAMEL rating system framework in 1987 after the FFIEC's UFIRS, or CAMEL framework. Subsequently, FFIEC updated the CAMEL system to CAMELS in 1996. The NCUA continued to model subsequent amendments to its CAMEL system after the FFIEC's CAMELS framework. The Board's decision to add the ''S'' component and thus adopt the CAMELS rating system further enhances the consistency of the NCUA's rating system with the UFIRS system. The Board notes that the risk rating criteria for the ''S'' and ''L'' components are consistent with UFIRS. In addition, all other composite and component evaluation content and rating criteria are highly consistent with the FFIEC's CAMELS rating system. Consequently, the Board has determined that it is not necessary or beneficial to adopt UFIRS in its entirety.

Another commenter requested that the NCUA address the consistency of the examination process, stating that it has varied over the years from examiner to examiner. The commenter noted that the added criteria, which the commenter referred to as bifurcating components, could create more inconsistencies.

The NCUA has a framework in place that supports the uniform application of CAMEL. It includes annual supervisory priorities and examination scope updates, routine updates to the Examiner's Guide and National Supervisory Policy Manual, a standardized examination platform and training program, regional and national quality assurance and control programs, and periodic training that address the inter-relationships between and among risk categories and the CAMEL rating implications. As with all examination systems across financial regulators, there is the need for examiner judgment to assess a particular situation; however, the Board believes that the agency has established processes that will support uniformity in the application of the CAMELS rating system.

Several commenters expressed concern that the proposal would require changes to some credit union processes and procedures. One commenter was especially concerned that recent accounting changes to Current Expected Credit Losses may make the changes related to CAMELS more problematic, given the increased volatility in income statements. Another commenter expressed concern that changing the rating system will disrupt the examination process for credit unions, especially smaller credit unions. The commenter stated that even though this change will not likely be a problem for larger credit unions that already maintain separate policies to address these risks, it may impact smaller credit unions that do not already maintain separate policies. Such credit unions may be required to create new policies and train staff on procedures to monitor them to comply with the proposed rule. The commenter continued that smaller credit unions may not have reached the level of sophistication that is required by this change, thus creating a challenge for them.

The Board believes that the changes will not result in an unreasonable burden on credit unions. As the commenters noted, typically larger credit unions already have processes, procedures, and systems in place. With respect to smaller credit unions (for example, those with assets less than $100 million, or 65 percent of credit unions as of June 2021), the Board believes that the changes will not impose a burden. Examiners of small credit unions will continue using the Estimated NEV Tool (ENT) to evaluate IRR.[27] The ENT results inform the IRR category rating which in turn, would inform the ''S'' component rating. With the exception of the examination report separately disclosing the liquidity risk in the ''L'' component and sensitivity to market risk in the ''S'' component, the Board believes that small credit unions will experience minimal, if any, changes in examination procedures. Moreover, the change is an enhancement to the NCUA's supervision. Credit unions do not need to do anything more than they are already doing to comply with the policy requirements of the IRR Rule (§ 741.3(b)(5)).

One commenter stated that it is appropriate to implement the change in the first quarter of 2022 to allow credit unions to modify their systems. Several other commenters requested more lead time. One commenter suggested that the NCUA offer a transitional year in 2022, specifically performing examinations with the bifurcation but waiting to officially apply the ''S'' to the CAMEL rating until 2023. The commenter believed this delay would afford the NCUA time to complete the implementation of its new MERIT system and prepare clear internal guidance for examiners to follow along with clear guidance to the credit unions. Several other commenters recommended that the new rating system not be effective until at least six months after publication in the **Federal Register** noting the additional time would allow credit unions to adjust their reporting systems.

Credit unions and other stakeholders are aware that the Board has been working toward the new CAMELS system. Specifically, the NCUA's Office of Inspector General issued a report recommending this change in 2015 and issued a number of updates between 2016 and 2021 regarding the agency's CAMELS implementation status.[28] Accordingly, the Board has determined that its plans to have the CAMELS system take effect on April 1, 2022, as proposed, is appropriate.

One commenter stated that the NCUA should give credit unions the opportunity to comment should the NCUA decide to modify the rating descriptions used by the banking agencies.

The Board does not anticipate any modifications of the rating descriptions used by the other financial regulators. Nevertheless, the Board notes that any substantive change to the CAMELS rating system—either through recommendations by the FFIEC or at the Board's initiative—would generally be made through public notice and comment under the Administrative Procedure Act.

One commenter provided a comment, beyond the scope of the proposal, that suggested the NCUA should establish and publish an examination policy stating that if a credit union's operations have not changed from previous years, yet the same circumstances are leading to a new finding or a downgrade of a credit union's composite rating under the new system, an automatic review will be triggered. Similarly, another commenter requested that the Board create a process to allow a credit union to appeal a component and composite CAMELS rating.

The Board notes these comments are beyond the scope of the proposal and thus it would be inappropriate to make these changes in this rulemaking. The Board believes that it is more appropriate to address these issues in the supervisory process on a case-by-case basis. Further, credit unions currently may appeal composite CAMEL ratings of ''3,'' ''4,'' or ''5,'' and component ratings that have a significant adverse effect on the nature or level of supervisory oversight.[29]

[27] NCUA LCU 16–CU–08 (October 2016).

[28] Review of NCUA's Interest Rate Risk Program, Report #OIG–15–11, NCUA Office of Inspector Gen, (Nov. 13, 2015), *available at https://www.ncua.gov/files/oig/NCUA_Semiannual_Report_Congress_March_2016.pdf.*

[29] 12 CFR 746.103.

IV. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.[30] For purposes of this analysis, the NCUA considers small credit unions to be those having under $100 million in assets.[31] The agency has determined that this rule will not significantly affect credit unions regardless of asset size because it is not adding any substantive requirement. Accordingly, the associated cost is minimal. The NCUA certifies the rule will not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.[32] For purposes of the Paperwork Reduction Act of 1995, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. This rule imposes no new paperwork-related requirements. Therefore, this rule will not create new paperwork burdens or modify any existing paperwork burdens.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule will not have a substantial direct effect on the states, on the connection between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined this rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[33]

E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) generally provides for congressional review of agency rules.[34] A reporting requirement is triggered in instances where the NCUA issues a final rule as defined by § 551 of the Administrative Procedure Act. An agency rule, in addition to being subject to congressional oversight, may also be subject to a delayed effective date if the rule is a ''major rule.'' The NCUA does not believe this rule is a ''major rule'' within the meaning of the relevant sections of SBREFA. As required by SBREFA, the NCUA will submit this final rule to OMB for it to determine if the final rule is a ''major rule'' for purposes of SBREFA. The NCUA also will file appropriate reports with Congress and the Government Accountability Office so this rule may be reviewed.

List of Subjects

12 CFR part 700

Credit unions.

12 CFR part 701

Credit unions. Insurance. Reporting and recordkeeping requirements.

12 CFR part 703

Credit unions. Investments. Reporting and recordkeeping requirements.

12 CFR part 704

Corporate Credit Unions, Prompt Corrective Action

12 CFR part 713

Bonds. Credit unions. Insurance.

By the National Credit Union Administration Board on October 21, 2021

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons discussed in the preamble, the Board amends 12 CFR parts 700, 701, 703, 704, and 713 as follows:

PART 700—DEFINITIONS

■ 1. The authority citation for part 700 continues to read as follows:

Authority: 12 U.S.C. 1752, 1757(6), 1766.

§ 700.2 [Amended]

■ 2. In § 700.2, amend the definition of ''troubled condition'' by removing the word ''CAMEL'' and adding in its place the word ''CAMELS'', wherever it appears.

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 3. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1788, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

§ 701.14 [Amended]

■ 4. Amend § 701.14, in paragraphs (b)(3)(i) and (ii) and (b)(4)(i) and (ii), by removing the word ''CAMEL'' and adding in its place the word ''CAMELS''.

§ 701.23 [Amended]

■ 5. Amend § 701.23, in paragraph (b)(2) introductory text, by removing the word ''CAMEL'' and adding in its place the word ''CAMELS.''

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

■ 6. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), and 1757(15).

§ 703.13 [Amended]

■ 7. Amend § 703.13, in paragraph (d)(3)(iii), by removing the word ''CAMEL'' and adding in its place the word ''CAMELS''.

§ 703.14 [Amended]

■ 8. Amend § 703.14, in paragraphs (i) and (j)(4), by removing the word ''CAMEL'' and adding in its place the word ''CAMELS'', and in paragraph (j)(4) by removing the word ''subparagraph'' and adding ''paragraph (j)(4)'' in its place.

PART 704—CORPORATE CREDIT UNIONS

■ 9. The authority citation for part 704 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1781, 1789.

§ 704.4 [Amended]

■ 10. Amend § 704.4, in paragraph (d)(3)(ii), by removing the word ''CAMEL'' and adding in its place the word ''CAMELS''.

[30] 5 U.S.C. 603(a).

[31] Interpretive Ruling and Policy Statement 03–2, 68 FR 31949 (May 29, 2003) *as amended by* Interpretive Ruling and Policy Statement 13–1, 78 FR 4032 (Jan. 18, 2013).

[32] 44 U.S.C. 3507(d); 5 CFR part 1320.

[33] Public Law 105–277, 112 Stat. 2681 (1998).

[34] 5 U.S.C. 551.

PART 713—FIDELITY BOND AND INSURANCE COVERAGE FOR FEDERALLY INSURED CREDIT UNIONS

■ 11. The authority citation for part 713 continues to read as follows:

Authority: 12 U.S.C. 1761a, 1761b, 1766(a), 1766(h), 1789(a)(11).

§ 713.6 [Amended]

■ 12. Amend § 713.6, wherever it appears in the table in paragraph (a)(1) and paragraph (c), by removing the word ''CAMEL'' and adding in its place the word ''CAMELS''.

[FR Doc. 2021–23332 Filed 10–26–21; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 712

RIN 3133–AE95

Credit Union Service Organizations (CUSOs)

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is issuing a final rule that amends the NCUA's credit union service organization (CUSO) regulation. The final rule accomplishes two objectives: expanding the list of permissible activities and services for CUSOs to include the origination of any type of loan that a Federal credit union (FCU) may originate; and granting the Board additional flexibility to approve permissible activities and services.

DATES: This final rule is effective November 26, 2021.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Office of General Counsel, (703) 518–6540; or by mail at National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

I. Introduction

Legal Authority and Background

The Board is issuing this rule pursuant to its authority under the Federal Credit Union Act (FCU Act).[1] Under the FCU Act, the NCUA is the chartering and supervisory authority for FCUs and the federal supervisory authority for federally insured credit unions (FICUs). The FCU Act grants the NCUA a broad mandate to issue regulations governing both FCUs and FICUs. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe regulations for the administration of the FCU Act.[2] Section 209 of the FCU Act is a plenary grant of regulatory authority to the NCUA to issue regulations necessary or appropriate to carry out its role as share insurer for all FICUs.[3] Accordingly, the FCU Act grants the Board broad rulemaking authority to ensure that the credit union industry and the National Credit Union Share Insurance Fund (NCUSIF) remain safe and sound.

Under the FCU Act, FCUs have the authority to lend up to one percent of their paid-in and unimpaired capital and surplus, and to invest an equivalent amount, in CUSOs.[4] The NCUA regulates FCUs' lending to, and investment in, CUSOs in part 712 of its regulations (CUSO rule).[5] In general, a CUSO is an organization: (1) In which a FICU has an ownership interest or to which a FICU has extended a loan; (2) is engaged primarily in providing products and services to credit unions, their membership, or the membership of credit unions contracting with the CUSO; and (3) whose business relates to the routine daily operations of the credit unions it serves.[6] The CUSO rule provides a list of preapproved activities and services related to the routine daily operations of credit unions.[7]

The list of preapproved activities and services in the CUSO rule has not been substantively revised since 2008.[8] The 2008 final rule added two new categories of permissible CUSO activities: (1) Credit card loan origination and (2) payroll processing services. The 2008 final rule also added new examples of permissible CUSO activities and clarified that FCUs may invest in, and loan to, CUSOs that buy and sell participations in loans they are authorized to originate. In the 2008 final rule, commenters requested that FCUs be permitted to lend to or invest in CUSOs involved in broader types of lending; specifically, car loans, including direct lending and the purchase of retail installment sales contracts from vehicle dealerships, and payday lending. The NCUA, however, declined to provide such authority at that time.[9]

II. Proposed Rule

At its January 14, 2021 meeting, the Board issued the proposed rule to amend the NCUA's CUSO regulation.[10] The proposed rule would accomplish two objectives: Expanding the list of permissible activities and services for CUSOs that FCUs may lend to or invest in to include origination of any type of loan that an FCU may originate; and granting the Board additional flexibility to approve permissible activities and services. The NCUA also sought comment on broadening general FCU investment authority in CUSOs based on the FCU Act's provision that authorizes FCUs to invest in organizations providing services associated with the routine operations of credit unions, which is codified in a separate provision from the authority for FCUs to lend to ''credit union organizations.'' The proposed rule provided for a 30-day comment period that closed on March 29, 2021. To allow interested persons more time to consider and submit comments, the Board extended the comment period for an additional 30 days. The extended comment period closed on April 30, 2021.[11]

The Board received over 1,000 comments on the proposed rule. Comments were received from credit unions, both state and federal, CUSOs, credit union leagues and trade associations, banking trade organizations, individuals, consumer organizations, and an association of state credit union supervisors. In general, consumer organizations, banking trade organizations, and individuals who participated in a form letter writing campaign were opposed to the proposed rule. Credit unions were not unanimous, with some credit unions supporting the rule and others opposing it. CUSOs, credit union leagues, and trade organizations were generally in favor of the proposed rule.

III. Final Rule

The final rule adopts the proposed rule without any substantive change. Under the final rule, therefore, CUSOs are permitted to originate any type of

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[1] 12 U.S.C. 1751 *et seq.*

[2] 12 U.S.C. 1766(a).

[3] 12 U.S.C. 1789.

[4] 12 U.S.C. 1757.

[5] 12 CFR part 712. All sections of part 712 apply to FCUs. Sections 712.2(d)(2)(ii), 712.3(d), 712.4, and 712.11(b) and (c) apply to federally insured, state-chartered credit unions (FISCUs), as provided in § 741.222 of the chapter. FISCUs must follow the law in the state in which they are chartered with respect to the sections in part 712 that only apply to FCUs. Corporate credit union CUSOs are subject to part 704. Any amendments to part 704 would occur through a separate rulemaking and are not included in this final rule.

[6] *See* 12 CFR 712.1(d), 712.3(b), and 712.5.

[7] 12 CFR 712.5.

[8] 73 FR 79307 (Dec. 29, 2008).

[9] The NCUA's rationale for not extending CUSO lending authority more broadly is discussed in detail in Section III, Final Rule.

[10] 86 FR 11645 (Feb. 26, 2001).

[11] 86 FR 16679 (Mar. 31, 2021).