

Rules and Regulations

Federal Register

Vol. 77, No. 240

Thursday, December 13, 2012

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703, 704, 709, and 741

RIN 3133-AD86

Alternatives to the Use of Credit Ratings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is issuing a final rule to implement certain statutory requirements in Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) pertaining to the use of credit ratings to assess creditworthiness. The final rule removes references to credit ratings in NCUA regulations or replaces them with other appropriate standards of creditworthiness as required by the Dodd-Frank Act.

DATES: This rule is effective June 11, 2013.

FOR FURTHER INFORMATION CONTACT: Mark Vaughan, Director, Division of Analytics and Surveillance, or Dale Klein, Senior Capital Markets Specialist, Office of Examination and Insurance, at (703) 518-6360; or Frank Kressman, Associate General Counsel, or Lisa Henderson, Staff Attorney, at (703) 518-6540. All may be reached at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Public Comments
- III. Actions of Other Regulators
- IV. Final Rule Standard
- V. Specific Amendments to NCUA Regulations
- VI. Regulatory Procedures

I. Background

Why is NCUA adopting this rule?

Section 939A of the Dodd-Frank Act requires all federal agencies, including NCUA, to review their regulations for any use of credit ratings to assess the creditworthiness of a security or money market instrument, remove those references, and substitute in those regulations other standards of creditworthiness that they determine to be appropriate.¹ On February 17, 2011, the NCUA Board issued a Notice of Proposed Rulemaking (NPRM) to implement section 939A.²

How did the NCUA Board propose to replace the ratings in the NPRM?

The NPRM identified references made to nationally recognized statistical rating organization (NRSRO)³ credit ratings in parts 703, 704, 709, and 742 of NCUA regulations.⁴ The NPRM generally treated NRSRO credit rating references three different ways, as discussed below, depending on how the rating was used in the regulations. The preamble to the NPRM also acknowledged that there were many possible standards of creditworthiness that could be used and sought suggestions for alternative standards.

For regulations pertaining to investment securities, the NPRM replaced minimum rating requirements with a requirement that the federal credit union (FCU) or corporate credit union (corporate) conduct and document a credit analysis demonstrating that the issuer of the security has a certain, specified capacity to meet its financial commitments. These replacement standards were based on narrative descriptions provided by the NRSROs for certain letter ratings. For example, where NCUA regulations currently require an investment to have a AA rating, the proposal required the credit union to determine that the issuer of the security had a *very strong* capacity to meet its financial commitments. The NPRM preamble noted that a credit union

could use internal and external assessments when evaluating the financial strength of an issuer. The preamble also noted that NCUA would provide additional supervisory guidance on assessing creditworthiness. For regulations pertaining to counterparty transactions, the NPRM replaced minimum rating requirements with a requirement that the credit union conduct a credit analysis of the counterparty based on a standard approved by the credit union's board. For provisions not related to investment and counterparty suitability, the NPRM generally deleted references to ratings without requiring a substitute analysis.

II. Public Comments

The public comment period for the NPRM ended on May 2, 2011, and NCUA received 11 comments. In general, most of the commenters did not support the proposal. While many acknowledged that the Dodd-Frank Act requires NCUA to remove ratings references, they opposed replacing the ratings with a credit analysis tied to a narrative description, arguing that it was too subjective and would cause confusion. These commenters generally did not propose alternative standards of creditworthiness. A number of commenters stated that the proposal went beyond the requirements of the Dodd-Frank Act, arguing that the legislation does not prohibit financial institutions from using credit ratings. The NCUA Board notes that nothing in the NPRM prohibited credit unions from using credit ratings as an element of the required credit analysis.

A few commenters responded to NCUA's request for comments on alternative standards of creditworthiness. One suggested that NCUA publish a list of acceptable "safe harbor" investments. The NCUA Board believes that establishing such a list would effectively transfer credit union risk management to NCUA. Credit union boards and management teams are in a better position to assess the appropriateness of investment instruments and transactions based on their credit unions' unique risk preferences, portfolio objectives, and balance sheet composition. A safe harbor provision exempts an investor from due diligence responsibility and could be viewed as NCUA's tacit

¹ Public Law 111-203, 124 Stat. 1376 (2010) sec. 939A.

² 76 FR 11164 (Mar. 1, 2011).

³ An NRSRO is an entity registered with the U.S. Securities and Exchange Commission (SEC) under section 15E of the Securities Exchange Act of 1934. See 15 U.S.C. 78o-7, as implemented by 17 CFR 240.17g-1.

⁴ 12 CFR parts 703, 704, 709, and 742.

endorsement of the suitability of certain investments.

Without providing specific numbers, another commenter suggested generally that an alternative standard could be based on credit spreads. The NCUA Board does not support this approach because credit spreads are a function of open markets and they reflect investor interest for reasons that include, but are not limited to, credit risk. Market credit spreads for various asset classes experience variability depending on current supply and demand for the product, actual market interest rates, and a variety of other factors. While the NCUA Board declines to establish specific allowable credit spreads, it notes that FCUs and corporates may use credit spread information as a factor in assessing changes in creditworthiness.

Several commenters suggested that NCUA wait to finalize alternative standards of creditworthiness until other financial institution regulators have proposed or finalized standards. Since the NCUA Board issued the NPRM, the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) have issued final rules replacing credit ratings with alternative creditworthiness standards similar to those the NCUA Board proposed in the NPRM. Further, the SEC has issued comparable proposed rules. We discuss these final and proposed rules below. We also discuss how the NCUA Board has adjusted the replacement credit standards in this final rule from those in the NPRM.

Several commenters requested more guidance on how a credit union's board of directors should establish credit quality standards for counterparties. In general, a credit union board should clearly articulate the institution's risk tolerance for counterparty credit risk by approving relevant policies, including a framework for establishing limits on individual counterparty exposures and concentrations of exposures. In turn, senior management should establish and implement a comprehensive risk measurement and management framework consistent with this risk tolerance that provides for the ongoing monitoring, reporting, and control of counterparty credit risk exposures. The policies and framework should be appropriate to the size, nature, and complexity of the credit union's counterparty credit risk profile.

III. Actions of Other Regulators

The OCC and FDIC have issued final rules replacing NRSRO-based security

creditworthiness standards.⁵ The new rules redefine an "investment grade" security as one where the issuer has an adequate capacity to meet all financial commitments under the security for the projected life of the security. To meet this new standard, national banks and federal and state savings associations must determine that the risk of default by the obligor is low and that the full and timely repayment of principal and interest is expected.

The SEC has proposed to remove references to credit ratings in its regulations governing investments made by mutual funds.⁶ The proposal includes replacing creditworthiness standards that reference credit ratings with standards that would reflect evaluating other criteria. It would replace a requirement that a security purchased by a money market mutual fund be rated in "one of the two highest short-term rating categories" with a standard that the security have minimal credit risk. The determination of minimal credit risk would be based on factors pertaining to credit quality and the issuer's ability to meet its short-term financial obligations. Under the SEC's proposed rule 2a-7, while the mutual fund's board of directors must independently determine that an investment has minimal credit risk, it would be permitted to continue using credit ratings as one factor to make that determination.⁷

The SEC also has proposed to amend the Broker-Dealer Net Capital Rule to remove references to credit ratings.⁸ That rule currently applies lower capital requirements to certain types of securities held by broker-dealers if the securities are rated in high rating categories by at least two NRSROs. Under the SEC's proposal, for commercial paper, nonconvertible debt, and preferred stock to qualify for the lower capital requirements, a broker-dealer would be required to establish,

maintain, and enforce written policies and procedures designed to assess a security's credit and liquidity risks. Based on this process, the broker-dealer would have to determine that the investment poses only a "minimal amount of credit risk."

Under the SEC's proposed amendments, a broker-dealer could consider various factors in assessing a security's credit risk. These factors could include credit spreads, securities-related research, internal or external credit risk assessments (including credit ratings), and default statistics. The preamble to the SEC's proposal states that the criteria are meant to capture securities that should generally qualify as investment grade under the current ratings-based standard "without placing undue reliance on third-party credit ratings."

IV. Final Rule Standard

In response to comments that the NPRM's proposed creditworthiness standards are confusing, and taking into account the other federal financial regulatory agencies' final and proposed rules, the NCUA Board is replacing the various NRSRO-based security creditworthiness standards in NCUA regulations with only two standards: "Investment grade" and "minimal amount of credit risk." An investment grade security is one where the credit union determines that the issuer has an adequate capacity to meet all financial commitments under the security for the projected life of the asset or exposure, even under adverse economic conditions. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low, and the full and timely repayment of principal and interest on the security is expected. A security with a minimal amount of credit risk is one where the credit union determines that the issuer has a very strong capacity to meet all financial commitments under the security for the projected life of the asset or exposure, even under adverse economic conditions. An issuer has a very strong capacity to meet all financial commitments if the risk of default by the obligor is very low, and the full and timely repayment of principal and interest on the security is expected. As discussed below, "investment grade" is used in part 703 and, with one exception, "minimal amount of credit risk" is used in part 704.

In evaluating the creditworthiness of a security, a credit union may consider any of the following factors, to the extent appropriate:

- Credit spreads (*i.e.*, whether it is possible to demonstrate that a security

⁵ 77 FR 35253 (June 13, 2012); 77 FR 43151 (July 24, 2012).

⁶ 76 FR 12896 (Mar. 9, 2011).

⁷ Specifically, the SEC proposal states: "Nothing in the proposed rule would prohibit a money market fund from relying on policies and procedures it has adopted to comply with the current rule as long as the board concluded that the [credit] ratings specified in the policies and procedures establish similar standards to those proposed and are credible and reliable for that use." 76 FR 12899 (Mar. 9, 2011) n.32.

The SEC's March 9, 2011, proposal also notes that in addition to referencing credit ratings, the SEC rules already require a mutual fund board of directors to determine that a security meets the requisite investment standards based on factors "in addition to any ratings assigned." Thus, under the SEC's current rule, a mutual fund may not purchase an investment based on the credit rating alone.

⁸ 76 FR 26550 (May 6, 2011).

is subject to a particular amount of credit risk based on the spread between the security's yield and the yield of Treasury or other securities);

- Securities-related research (*i.e.*, whether providers of securities-related research believe the issuer of the security will be able to meet its financial commitments, generally or specifically, with respect to the securities held by the credit union);

- Internal or external credit risk assessments (*i.e.*, whether credit assessments developed internally by the credit union or externally by a credit rating agency, irrespective of its status as an NRSRO, express a view as to a particular security's credit risk);

- Default statistics (*i.e.*, whether providers of credit information relating to securities express a view that specific securities have a probability of default consistent with other securities with a particular amount of credit risk);

- Inclusion on an index (*i.e.*, whether a security, or issuer of the security, is included as a component of a recognized index of instruments that are subject to a specific amount of credit risk);

- Priorities and enhancements (*i.e.*, the extent to which a security is covered by credit enhancements, such as overcollateralization and reserve accounts);

- Price, yield, and/or volume (*i.e.*, whether the price and yield of a security are consistent with other securities that the credit union has determined are subject to a particular amount of credit risk and whether the price resulted from active trading); and

- Asset class-specific factors (*e.g.*, in the case of structured finance products, the quality of the underlying assets).

NCUA will discuss these and other factors in supervisory guidance to be provided to FCUs and corporates before the effective date of this final rule.

Several commenters argued that the rule itself, not just the preamble, should explicitly state that a credit union may consider third-party assessments in evaluating the financial strength of issuers and counterparties. The NCUA Board agrees and has included the above list of resources, including external risk assessments, in the new regulatory definitions of "investment grade" and "minimal amount of credit risk" discussed below.

V. Specific Amendments to NCUA Regulations

a. Part 703—Investment and Deposit Activities

Definitions

Section 703.2 contains definitions of terms related to the investment activities of natural person FCUs.⁹ Three of the definitions refer to credit ratings.

Deposit Note

Section 703.2 defines "deposit note" as an obligation of a bank that is similar to a certificate of deposit "but is rated." The NPRM deleted the definition of "deposit note" entirely, as the term is standard in the securities industry. NCUA received no comments on this deletion, and the NCUA Board is adopting it as proposed.

Mortgage Related and Small Business Related Securities

Section 107(15)(B) and (C) of the FCU Act¹⁰ provides authority for an FCU to purchase a mortgage related security, as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (Exchange Act),¹¹ and a small business related security as that term is defined in section 3(a)(53) of the Exchange Act.¹² Section 703.2 defines "mortgage related security" and "small business related security" by referencing and quoting the Exchange Act definitions. Prior to July 20, 2012, the Exchange Act definitions contained references to NRSRO ratings. The Dodd-Frank Act removed the NRSRO references from the Exchange Act definitions, effective July 20, 2012, providing instead that each type of security must meet standards of creditworthiness as established by the SEC.¹³

The NPRM amended § 703.2 by retaining the cross-references to the Exchange Act but removing the quotations from the Exchange Act in the definitions of mortgage related security and small business related security. Under the proposal, an FCU could not purchase a mortgage related security or small business related security unless it determined that the security meets the SEC's definition of the term. Several commenters stated that NCUA should delay modifying the definitions of mortgage related security and small business related security until the SEC has established the requisite standards of creditworthiness. While the SEC has

not established a final standard of creditworthiness, it has established a transitional standard so that markets can continue to function.¹⁴ Accordingly, the NCUA Board is adopting the definitions as proposed.

Investment Grade

For clarity, the NCUA Board is adding a definition of "investment grade" to part 703. Under the definition, a security is considered to be investment grade if the issuer of that security has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure, even under adverse economic conditions. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low, and the full and timely repayment of principal and interest on the security is expected. An FCU may consider any or all of the following factors, to the extent appropriate, with respect to a security's credit risk: credit spreads; securities-related research; internal or external credit risk assessments; default statistics; inclusion on an index; priorities and enhancements; price, yield, and/or volume; and asset class-specific factors.

Broker-Dealers and Safekeepers

Sections 703.8(b)(3) and 703.9(d) list a number of factors that FCUs should consider when evaluating the reliability of broker-dealers and investment safekeepers, respectively.¹⁵ One factor is NRSRO reports. The NPRM replaced the NRSRO reference in those sections with the phrase "external assessments of creditworthiness." NCUA received no comments on §§ 703.8(b)(3) and 703.9(d), and the NCUA Board is adopting the revision as proposed.

Permissible Investments

Section 703.14 establishes standards for permissible investments for FCUs.¹⁶ Section 703.14(e) provides that an FCU may purchase a municipal security that an NRSRO has rated in one of the four highest rating categories.¹⁷ The NPRM removed the minimum rating requirements, substituting a requirement that the FCU demonstrate that the issuer of a security has at least an adequate capacity to meet its financial obligations, even under adverse economic conditions, for the projected life of the security. As discussed above, the final rule labels such a standard "investment grade."

⁹ 12 CFR 703.2.

¹⁰ 12 U.S.C. 1757(15)(B) and (C).

¹¹ 15 U.S.C. 78c(a)(41).

¹² 15 U.S.C. 78c(a)(53).

¹³ Dodd-Frank Act, sec. 939(e).

¹⁴ 77 FR 42980 (July 23, 2012).

¹⁵ 12 CFR 703.8(b)(3), 703.9(d).

¹⁶ 12 CFR 703.14.

¹⁷ 12 CFR 703.14(e).

Under the final rule, an FCU may purchase a municipal security if it conducts and documents a credit analysis that reasonably concludes the security is at least investment grade, as defined in § 703.2.

To further limit the risk associated with the purchase of municipal securities, the NPRM added new concentration limits on such holdings. Specifically, it required an FCU to limit its aggregate holdings of municipal securities to no more than 75 percent of the FCU's net worth and its holdings of municipal securities issued by any single issuer to no more than 25 percent of the FCU's net worth.

One commenter suggested that municipal security concentration limits should distinguish between general obligation and revenue bonds. The commenter suggested that an appropriate aggregate limit would be 100 percent of net worth for general obligation bonds and 25 percent of net worth for revenue bonds. The NCUA Board disagrees with this suggestion. The NCUA Board acknowledges that general obligation bonds and revenue bonds are considered separate asset classes by many investors. These municipal securities, like all capital market instruments, undergo structural changes over time resulting in changing risk profiles. The risk of loss to a FCU may be similar with both types of municipal securities if there were an adverse event at the issuer level. Therefore, limiting exposure to any single obligor to 25 percent of net worth is prudent to mitigate risks of loss to the NCUSIF.

Section 703.14(g) permits an FCU to purchase a European financial options contract for the purpose of hedging the risk associated with issuing share certificates with dividends tied to an equity index.¹⁸ There are a number of conditions for any such purchase, including that the counterparty meet certain NRSRO ratings requirements and that the aggregate amount of such index-linked certificates not exceed the FCU's net worth. The NPRM removed the reference to the NRSRO ratings and instead required that the counterparty meet credit standards approved by the FCU's board. To mitigate any risk associated with the removal of credit ratings in this context, the proposal tightened the concentration limit from 100 percent of the FCU's net worth to 50 percent of the FCU's net worth. NCUA received no comments specifically on this section, and the NCUA Board is adopting it as proposed.

Section 703.14(h) permits an FCU to invest in mortgage note repurchase transactions under certain conditions, including that the counterparty meet certain NRSRO ratings requirements and that the aggregate amount of the investments with all counterparties be limited to 100 percent of the FCU's net worth.¹⁹ The NPRM removed the reference to the NRSRO ratings, requiring instead that the counterparty meet credit standards approved by the FCU's board. The proposal also lowered the aggregate concentration limit to 50 percent of the FCU's net worth. NCUA received no comments specifically on this section, and the NCUA Board is adopting it as proposed.

In the time between the issuance of the NPRM and this final rule, the NCUA Board added a new § 703.14(j) to permit FCUs to purchase certain commercial mortgage related securities (CMRS) and deleted part 742 of the regulations governing NCUA's Regulatory Flexibility (RegFlex) Program.²⁰ Before these 2012 rule changes, § 703.16(d) generally prohibited FCUs from purchasing private label CMRS, but § 742.4(a)(6) permitted RegFlex credit unions to purchase such a security provided, among other things, the security was rated in one of the two highest rating categories by at least one NRSRO.²¹ The NPRM removed the NRSRO requirement from former § 742.4(a)(6), replacing it with the requirement that the issuer have a very strong capacity to meet its financial obligations, even under adverse economic conditions, for the projected life of the security. New § 703.14(j) was made final with the ratings-based requirement because it preceded this final rule. Consistent with the discussion above, however, the NCUA Board is replacing this ratings-based requirement with a requirement that the FCU conduct and document a credit analysis that reasonably concludes the security is at least investment grade.

Grandfathered Investments

Part 703 grandfathers certain specific securities and transactions purchased or entered into before or within certain dates.²² Several commenters argued that this final rule should explicitly provide that investments purchased under existing credit rating requirements are also grandfathered. The NCUA Board disagrees. As a matter of sound practice, FCUs must manage the credit risk

inherent in their investment securities and transactions by taking into account the risk of deterioration. FCUs have an ongoing obligation to reevaluate creditworthiness and address deterioration as appropriate. An FCU's initial evaluation of credit quality is not a permanent justification for asset retention.

b. Part 704—Corporate Credit Unions

Definitions

Section 704.2 contains definitions of terms related to the investment activities of corporates.²³ The NPRM eliminated the definition of "NRSRO" and deleted references to NRSROs in the definitions of "asset-backed commercial paper (ABCP) program" and "small business related security." NCUA received no comments on these proposed changes, and the NCUA Board adopts them in the final rule.²⁴

In § 704.2, the definition of "eligible ABCP liquidity facility" provides that if the assets that the facility is required to fund against have received NRSRO ratings at the time of the facility's inception, the facility can be used to fund only those assets that are rated investment grade by an NRSRO at the time of funding.²⁵ The NPRM removed the NRSRO references, providing instead that a facility can be used to fund only those assets or exposures that demonstrate adequate capacity to meet their financial obligations, even under adverse economic conditions, for the projected life of the asset or exposure. As discussed above, this "investment grade" standard no longer contains an explicit rating requirement. Under the final rule, an eligible ABCP liquidity facility can be used to fund only those assets or exposures the corporate credit union reasonably concludes are at least investment grade.

The NCUA Board is adding definitions of "investment grade" and "minimal amount of credit risk" to § 704.2. "Investment grade" has the same meaning as in part 703, and "minimal amount of credit risk" means the issuer of a security has a very strong capacity to meet all financial

²³ 12 CFR 704.2.

²⁴ While NCUA's authority to regulate the investment activities of natural person FCUs is limited by the FCU Act, *see* discussion above under "Part 703—Investment and Deposit Activities," its authority to regulate the investment activities of corporate credit unions is less limited. *See* 12 U.S.C. 1766(a) (providing that corporate credit unions are subject to such rules, regulations, and orders as the NCUA Board deems appropriate). Accordingly, NCUA may revise the definition of "small business related security" in part 704 without regard to section 107(15)(C) of the FCU Act, 12 U.S.C. 1757(15)(C).

²⁵ 12 CFR 704.2.

¹⁹ 12 CFR 703.14(h).

²⁰ 77 FR 31981 (May 31, 2012).

²¹ *See* 12 CFR 703.16(d), 742.4(a)(6).

²² 12 CFR 703.18, as amended by 77 FR 31981 (May 31, 2012).

¹⁸ 12 CFR 703.14(g).

commitments under the security for its projected life, even under adverse economic conditions. In both cases, a corporate may consider the following factors with respect to a security's credit risk: Credit spreads; securities-related research; internal or external credit risk assessments; default statistics; inclusion on an index; priorities and enhancements; price, yield, and/or volume; and asset class-specific factors.

Credit Risk Management

Section 704.6(f) establishes minimum credit quality standards for corporate credit union investments.²⁶ The standards include that each investment must have an NRSRO rating and that at least 90 percent of a corporate's investment portfolio must have at least two such ratings. The standards further require long-term investment ratings of at least AA -, short-term ratings of at least A -, and monitoring of the ratings as long as a corporate holds the investment.

The NPRM removed the minimum rating requirements, providing instead that for an investment to be permissible, it must be originated by an issuer that has at least a very strong capacity to meet its financial obligations, even under adverse economic conditions, for the projected life of the security. This standard applied to both long-term and short-term investments. The NPRM also required a corporate to monitor any changes in credit quality of the investment as long as it held the investment.

The NCUA Board has decided to label this standard "minimal amount of credit risk." This standard requires a higher level of credit quality than the "investment grade" standard discussed above, as it requires an issuer to have a "very strong" rather than just "adequate" capacity to meet financial commitments. The higher standard is appropriate for corporates given their mission of providing liquidity to natural person credit unions in a wide range of economic circumstances. The 2010 comprehensive overhaul of NCUA's corporate credit union regulations was designed to enable corporates to serve primarily as liquidity facilities and payment system providers.²⁷ As liquidity facilities, corporates must maintain high quality, marketable investments that can be sold quickly, without incurring undue loss, to fund loan and share demands. Securities with higher credit quality naturally are more marketable than those with lower quality. Thus, the NCUA Board does not

intend for the elimination of references to credit ratings to fundamentally change the standards that corporates should use when deciding whether a security is eligible for purchase. To enhance the ability of NCUA and corporate capital holders to monitor this process, the NCUA Board is considering modifying the corporate Call Report to require additional investment disclosures.

Accordingly, under § 704.6(f)(1) of this final rule, a corporate may purchase an investment only if it conducts and documents a credit analysis that reasonably concludes the security has no more than a minimal amount of credit risk. In addition, under § 704.6(f)(2) of this final rule, a corporate must monitor any changes in the credit quality of the investment and retain appropriate supporting documentation as long as the corporate owns the investment.

At the time the NPRM was issued, § 704.6(f)(4) required a corporate to develop an investment action plan if an NRSRO that initially rated a security later downgraded the rating below the minimum requirements. The NPRM modified this to require an investment action plan if the issuer no longer had a very strong capacity to meet its financial obligations for the security. Between the issuance of the NPRM and this final rule, the NCUA Board revised § 704.6 by moving paragraph (f)(4) to a new paragraph (h).²⁸ Like former paragraph (f)(4), new paragraph (h)(1) requires a corporate to develop an investment action plan if an NRSRO that initially rates an investment later downgrades the rating below the minimum requirements. In light of the changes to the creditworthiness standard in § 704.6(f)(1) discussed above, the NCUA Board is revising § 704.6(h)(1) to trigger the requirement to prepare an investment action plan if appropriate monitoring of the investment would lead to the reasonable conclusion that the investment's credit quality has more than a minimal amount of credit risk.

Section 704.6(g) requires a corporate to maintain documentation for each credit limit with each obligor or transaction counterparty, including rating agency information. The NPRM deleted the reference to rating agency information. NCUA received no comments on this section, and the NCUA Board adopts it as proposed.

Expanded Authorities

Under Part I of Appendix B to part 704, corporates that meet certain

conditions may purchase investments with lower credit ratings than the general AA requirement of § 704.6(f). Part I allows corporates to purchase investments with long-term ratings of at least A - and short-term ratings of at least A - 2. In addition, in the latter case, the issuer must have at least a long-term rating no lower than A - or the investment must be a domestically-issued asset-backed security. The NPRM replaced these ratings requirements with a requirement that an issuer have at least a strong capacity to meet its financial obligations. In this final rule, the NCUA Board has determined to permit corporates that qualify for Part I authorities to purchase securities that are at least investment grade. As discussed above, with respect to part 703, a security is considered to be investment grade if the issuer of that security has adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure, even under adverse economic conditions. This standard permits more credit risk than the "minimal amount of credit risk" standard. A corporate that has been approved for Part I authorities has additional systems that will enable it to appropriately monitor this additional credit risk to ensure that the investments held remain marketable.

Part II of Appendix B to part 704 authorizes qualifying corporates to purchase certain foreign investments provided, among other things, the sovereign issuer and/or the country in which the obligor is organized has a long-term foreign currency debt rating no lower than AA -. The NPRM deleted the NRSRO reference, providing instead that a corporate may purchase a foreign investment only pursuant to an explicit policy established by the corporate's board of directors. The NPRM also required a corporate to determine that a foreign issuer or issuer had at least a very strong capacity to meet its financial obligations. The NCUA Board has decided to replace this standard with a requirement that the issue or issuer have no more than a minimal amount of credit risk.

In accordance with the NPRM discussion, the NCUA Board is replacing the ratings requirement in Part III of Appendix B to part 704 with a requirement that a counterparty meet minimum credit quality standards as established by the corporate's board of directors.

Risk-Based Capital

Appendix C to Part 704 explains how a corporate must compute its risk-weighted assets for purposes of

²⁶ 12 CFR 704.6(f).

²⁷ See 75 FR 64786 (Oct. 20, 2010).

²⁸ 76 FR 79531 (Dec. 22, 2011).

determining its capital ratios. In the definitions section, “traded position” is defined with reference to an NRSRO rating and is used only in paragraphs II(c)(3) and (4).²⁹ Paragraphs II(c)(3) and (4) provide alternative methods for calculating the risk weights of certain assets. Since these alternative methods involve reliance on NRSRO ratings, the NPRM deleted these paragraphs, as well as the definition of “traded position.” The NPRM added a new paragraph II(c)(3) which allowed a corporate with advanced risk management and reporting systems to seek NCUA approval to use an internal ratings-based approach to calculate risk-weights for those positions.³⁰ The NCUA Board received no comments on these aspects of the NPRM and is adopting them as proposed.

The NPRM also removed other ratings-based requirements in Appendix C, replacing several with board of director standards and one, in paragraph II(a)(2)(viii)(A), with a requirement that a qualifying securities firm demonstrate at least a strong capacity to meet its financial obligations, even under adverse economic conditions, for the projected life of an exposure. The NCUA Board is replacing this with the “minimal amount of credit risk” standard.

c. Part 709—Involuntary Liquidation of Federal Credit Unions and Adjudication of Creditor Claims Involving Federally Insured Credit Unions in Liquidation

Part 709 of the NCUA regulations governs the involuntary liquidation of FCUs and the adjudication of creditor claims involving federally insured credit unions (FICUs).³¹ Section 709.10(b) provides that NCUA will not

use its authority to repudiate contracts under Section 207(c) of the FCU Act³² to reclaim, recover, or recharacterize financial assets transferred by a FICU in connection with a securitization or in the form of a participation. Section 709.10(f) provides that NCUA will not attempt to avoid an otherwise legally enforceable securitization or participation agreement solely because the agreement does not meet the requirements of sections 207(b)(9) and 208(a)(3) of the FCU Act. These sections provide that, to be enforceable against NCUA, any agreement that tends to diminish or defeat NCUA’s interest in an asset must be executed contemporaneously with the acquisition of the asset by the credit union.³³

Section 709.10(a)(5) sets forth a definition of “securitization” that includes a reference to NRSRO ratings. The NPRM deleted paragraph (a)(5) and references to securitization in paragraphs (b), (f), and (g), with the rationale that credit unions do not securitize assets within the meaning of part 709. In addition, the proposal deleted paragraph (a)(6), defining “special purpose entity,” as this phrase is only used in the definition of “securitization.”

Although NCUA received no comments on the proposed changes to part 709, this final rule retains the language relating to securitizations. In conformance with the requirements of the Dodd-Frank Act, however, the NCUA Board is replacing the definition of “securitization” in part 709, which contains an NRSRO reference, with the definition in part 704, which does not. Section 709.10(a)(5) now defines a “securitization” as the pooling and repackaging by a special purpose entity of assets or other credit exposures that can be sold to investors.

d. Part 741—Requirements for Insurance

Part 741 prescribes various requirements for obtaining and maintaining federal insurance. It does not contain a reference to NRSRO ratings but does require federally insured, state-chartered credit unions (FISCUs) to establish an additional special reserve for investments if those credit unions are permitted by their respective state laws to make investments beyond those authorized in the FCU Act or NCUA regulations.³⁴ As a consequence of this requirement, and to reduce the possibility that a FISCU will have to establish a special reserve,

many states have instituted credit union investment laws that parallel part 703. For example, a state may authorize its state-chartered credit unions to purchase municipal securities rated in one of the four highest rating categories, as § 703.14(e) has provided for FCUs.

Although no changes were proposed to Part 741, one commenter stated that if a FISCU holds a ratings-based investment permissible under state law, that investment should not be considered “nonconforming” under § 741.3(a)(2). The NCUA Board agrees that a safe harbor should be preserved, and has added a sentence to § 741.3(a)(2) stating that if a FISCU conducts and documents a credit analysis that reasonably concludes an investment is at least investment grade, as defined in § 703.2, and the investment is otherwise permissible for FCUs, the investment is not considered to be beyond those authorized by NCUA regulations.

e. Part 742—Regulatory Flexibility Program

The NPRM removed an NRSRO requirement from a paragraph in part 742, but as discussed above, the NCUA Board subsequently moved that paragraph to § 703.14(j) and deleted part 742.³⁵ The NCUA Board’s treatment of the relocated paragraph in this final rule is also discussed above.

VI. Regulatory Procedures

a. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those credit unions under \$10 million in assets). This final rule removes NRSRO ratings from NCUA’s regulations. NCUA data show that credit unions with under \$10 million in assets generally do not engage in investment activities that are affected by those portions of the NCUA rules that refer to NRSRO ratings. Accordingly, NCUA has determined and certifies that this final 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 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.⁴⁴ U.S.C. 3507(d); 5 CFR part 1320. For purposes of the PRA, a paperwork burden may take the form of a reporting,

²⁹ 12 CFR Part 704, Appendix C, Part I(b).

³⁰ Acceptable internal credit risk rating systems typically: (1) Are an integral part of the corporate’s risk management system that explicitly incorporates the full range of risks arising from the corporate’s participation in securitization activities; (2) link internal credit ratings to measurable outcomes; (3) separately consider the risk associated with the underlying loans or borrowers and the risk associated with the structure of the particular securitization transaction; (4) identify gradations of risk; (5) use clear, explicit criteria to classify assets into each internal rating grade; (6) employ independent credit risk management or loan review personnel to assign or review the credit risk ratings; (7) include an internal audit procedure to periodically verify that internal risk ratings are assigned in accordance with the corporate’s established criteria; (8) monitor the performance of the assigned internal credit risk ratings over time to determine the appropriateness of the initial credit risk rating assignment, and adjust individual credit risk ratings or the overall internal credit risk rating system, as needed; and (9) make credit risk rating assumptions that are consistent with, or more conservative than, the credit risk rating assumptions and methodologies of NRSROs.

³¹ 12 CFR part 709.

³² 12 U.S.C. 1787(c).

³³ 12 U.S.C. 1787(b)(9) and 1788(a)(3).

³⁴ 12 CFR 741.3(a)(2).

³⁵ 77 FR 31981 (May 31, 2012).

recordkeeping, or disclosure requirement, both referred to as information collections. The Office of Management and Budget (OMB) approved the current information collection requirements in part 703 in 2007 and assigned them control number 3133–0133. OMB approved the current information collection requirements in part 704 and assigned them control number 3133–0129.

We believe that all of the corporate credit unions already have policies and procedures in place for evaluating the credit risk of securities activities, but this final rule may require additional analysis of credit risk for natural person FCUs and thus result in additional burden hours. We estimate that approximately 750 natural person FCUs may need to develop or augment a system for evaluating creditworthiness. We estimate that, on average, the FCUs will spend 20 hours on such a system, resulting in an initial aggregate burden of 15,000 hours. This estimate is based on the fact that many of these FCUs already have some criteria in place for evaluating creditworthiness.

We further estimate that, on average, each of those FCUs will spend an additional 10 hours each year reviewing, adjusting, and applying its system for evaluating creditworthiness, for a total of 7,500 hours across the industry. Once again, this estimate reflects that many of these FCUs already are applying a system of evaluating creditworthiness.

As required by the PRA, NCUA has submitted a copy of this proposal to OMB for its review and approval.

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, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order.

This final rule will not have substantial direct effects 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. NCUA has determined that this final 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

NCUA has determined that this final rule will not affect family well-being

within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

e. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act. 5 U.S.C. 551. OMB has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

12 CFR Part 703

Credit unions, Investments, Reporting and recordkeeping requirements.

12 CFR Part 704

Credit unions, Investments, Reporting and recordkeeping requirements.

12 CFR Part 709

Credit unions, Liquidations.

12 CFR Part 741

Credit unions, Reporting and recordkeeping requirements, Requirements for insurance.

By the National Credit Union Administration Board on December 6, 2012.

Mary F. Rupp,

Secretary of the Board.

For the reasons stated above, the National Credit Union Administration amends 12 CFR parts 703, 704, 709, and 741 as set forth below:

PART 703—INVESTMENTS AND DEPOSIT ACTIVITIES

- 1. The authority citation for part 703 continues to read as follows:

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

- 2. In § 703.2 remove the definition of *Deposit note*, add a definition of *Investment grade*, and revise the definitions of *Mortgage related security* and *Small business related security* to read as follows:

§ 703.2 Definitions.

* * * * *

Investment grade means the issuer of a security has an adequate capacity to meet the financial commitments under the security for the projected life of the asset or exposure, even under adverse economic conditions. An issuer has an adequate capacity to meet financial

commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest on the security is expected. A Federal credit union may consider any or all of the following factors, to the extent appropriate, with respect to the credit risk of a security: Credit spreads; securities-related research; internal or external credit risk assessments; default statistics; inclusion on an index; priorities and enhancements; price, yield, and/or volume; and asset class-specific factors. This list of factors is not meant to be exhaustive or mutually exclusive.

* * * * *

Mortgage related security means a security as defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)).

* * * * *

Small business related security means a security as defined in section 3(a)(53) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(53)). This definition does not include Small Business Administration securities permissible under section 107(7) of the Federal Credit Union Act.

* * * * *

- 3. In § 703.8, revise paragraph (b)(3) to read as follows:

§ 703.8 Broker-dealers.

* * * * *

(b) * * *

(3) If the broker-dealer is acting as the Federal credit union's counterparty, the ability of the broker-dealer and its subsidiaries or affiliates to fulfill commitments, as evidenced by capital strength, liquidity, and operating results. The Federal credit union should consider current financial data, annual reports, external assessments of creditworthiness, relevant disclosure documents, and other sources of financial information.

* * * * *

- 4. In § 703.9, revise paragraph (d) to read as follows:

§ 703.9 Safekeeping of investments.

* * * * *

(d) Annually, the Federal credit union must analyze the ability of the safekeeper to fulfill its custodial responsibilities, as evidenced by capital strength, liquidity, and operating results. The Federal credit union should consider current financial data, annual reports, external assessments of creditworthiness, relevant disclosure documents, and other sources of financial information.

■ 5. In § 703.14, revise paragraphs (e), (g)(9), (g)(11), (h)(1), (h)(2), and (j)(1) to read as follows:

§ 703.14 Permissible investments.

* * * * *

(e) *Municipal security.* A Federal credit union may purchase and hold a municipal security, as defined in section 107(7)(K) of the Act, only if it conducts and documents an analysis that reasonably concludes the security is at least investment grade. The Federal credit union must also limit its aggregate municipal securities holdings to no more than 75 percent of the Federal credit union's net worth and limit its holdings of municipal securities issued by any single issuer to no more than 25 percent of the Federal credit union's net worth.

* * * * *

(g) * * *

(9) The counterparty to the transaction meets the minimum credit quality standards as approved by the Federal credit union's board of directors.

* * * * *

(11) The aggregate amount of equity-linked member share certificates does not exceed 50 percent of the Federal credit union's net worth;

* * * * *

(h) * * *

(1) The aggregate of the investments with any one counterparty is limited to 25 percent of the Federal credit union's net worth and 50 percent of its net worth with all counterparties;

(2) At the time the Federal credit union purchases the securities, the counterparty, or a party fully guaranteeing the counterparty, must meet the minimum credit quality standards as approved by the Federal credit union's board of directors.

* * * * *

(j) * * *

(1) The Federal credit union conducts and documents a credit analysis that reasonably concludes the CMRS is at least investment grade.

* * * * *

PART 704—CORPORATE CREDIT UNIONS

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

Authority: 12 U.S.C. 1762, 1766(a), 1772a, 1781, 1789, and 1795e.

■ 7. In § 704.2:

■ a. Revise the definitions of *Asset-backed commercial paper program* and *Eligible ABCP liquidity facility*;

■ b. Add a definition of *Investment grade* and *Minimal amount of credit risk*;

■ c. Remove the definition of *Nationally Recognized Statistical Rating Organization*; and

■ d. Revise the definition of *Small business related security*.

The revisions and addition read as follows:

§ 704.2 Definitions.

* * * * *

Asset-backed commercial paper program (ABCP program) means a program that primarily issues commercial paper and that is backed by assets or other exposures held in a bankruptcy-remote special purpose entity. The term *sponsor of an ABCP program* means a corporate credit union that:

- (1) Establishes an ABCP program;
- (2) Approves the sellers permitted to participate in an ABCP program;
- (3) Approves the asset pools to be purchased by an ABCP program; or
- (4) Administers the ABCP program by monitoring the assets, arranging for debt placement, compiling monthly reports, or ensuring compliance with the program documents and with the program's credit and investment policy.

* * * * *

Eligible ABCP liquidity facility means a legally binding commitment to provide liquidity support to asset-backed commercial paper by lending to, or purchasing assets from any structure, program or conduit in the event that funds are required to repay maturing asset-backed commercial paper and that meets the following criteria:

- (1)(i) At the time of the draw, the liquidity facility must be subject to an asset quality test that precludes funding against assets that are 90 days or more past due or in default; and
- (ii) The facility can be used to fund only those assets or exposures that the corporate credit union has reasonably concluded, based on a documented analysis, are at least investment grade; or

(2) If the assets that are funded under the liquidity facility do not meet the criteria described in paragraph (1) of this definition, the assets must be guaranteed, conditionally or unconditionally, by the United States Government, its agencies, or the central government of an Organization for Economic Cooperation and Development (OECD) country.

* * * * *

Investment grade means the issuer of the security has an adequate capacity to meet the financial commitments under

the security for the projected life of the asset or exposure, even under adverse economic conditions. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest on the security is expected. A corporate credit union may consider any or all of the following factors, to the extent appropriate, with respect to the credit risk of a security: Credit spreads; securities-related research; internal or external credit risk assessments; default statistics; inclusion on an index; priorities and enhancements; price, yield, and/or volume; and asset class-specific factors. This list of factors is not meant to be exhaustive or mutually exclusive.

* * * * *

Minimal amount of credit risk means the amount of credit risk when the issuer of a security has a very strong capacity to meet all financial commitments under the security for the projected life of the asset or exposure, even under adverse economic conditions. An issuer has a very strong capacity to meet all financial commitments if the risk of default by the obligor is very low, and the full and timely repayment of principal and interest on the security is expected. A corporate credit union may consider any or all of the following factors, to the extent appropriate, with respect to the credit risk of a security: Credit spreads; securities-related research; internal or external credit risk assessments; default statistics; inclusion on an index; priorities and enhancements; price, yield, and/or volume; asset class-specific factors. This list of factors is not meant to be exhaustive or mutually exclusive.

* * * * *

Small business related security means a security that represents an interest in one or more promissory notes or leases of personal property evidencing the obligation of a small business concern and originated by an insured depository institution, insured credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or a finance company or leasing company. This definition does not include Small Business Administration securities permissible under section 107(7) of the Act.

* * * * *

■ 8. In § 704.6, revise paragraphs (f), (g)(2)(iii), and (h)(1) to read as follows:

§ 704.6 Credit risk management.

* * * * *

(f) *Credit ratings*—(1) Before purchasing an investment, a corporate credit union must conduct and document an analysis that reasonably concludes the investment has no more than a minimal amount of credit risk.

(2) A corporate credit union must identify and monitor any changes in credit quality of the investment and retain appropriate supporting documentation as long as the corporate owns the investment.

(g) * * *

(2) * * *

(iii) The latest available financial reports, industry analyses, and internal and external analyst evaluations sufficient to support each approved credit limit.

(h) * * *

(1) Appropriate monitoring of the investment would reasonably lead to the conclusion that the investment presents more than a minimal amount of credit risk; or

* * * * *

■ 9. In Appendix B:

■ a. Remove Part I (a)(2);

■ b. Redesignate Part I (a)(3), (4), and (5) as Part I (a)(2), (3), and (4), respectively;

■ c. Remove Part II (b)(2);

■ d. Redesignate Part II (b)(3), (4), and (5) as Part II (b)(2), (3), and (4), respectively; and

■ e. Revise Part I (a)(1), Part II (b)(1), and Part III (b) to read as follows:

Appendix B to Part 704—Expanded Authorities and Requirements

* * * * *

Part I

* * * * *

(a) * * *

(1) Purchase an investment after conducting and documenting an analysis that reasonably concludes the investment is at least investment grade;

* * * * *

Part II

* * * * *

(b) * * *

(1) Investments must be made pursuant to an explicit policy established by the corporate credit union's board of directors. Before purchasing an investment, the corporate credit union must conduct and document an analysis that reasonably concludes the foreign issue or issuer has no more than a minimal amount of credit risk;

* * * * *

Part III

* * * * *

(b) *Credit Quality*:

All derivative transactions are subject to the following requirements:

(1) If the intended counterparty is domestic, the counterparty must meet minimum credit quality standards as

established by the corporate's board of directors;

(2) If the intended counterparty is foreign, the corporate must have Part II expanded authority and the counterparty must meet minimum credit quality standards as established by the corporate's board of directors;

(3) The corporate must identify the criteria relied upon to determine that the counterparty meets the credit quality requirements of this part at the time the transaction is entered into and monitor those criteria for as long as the contract remains open; and

(4) The corporate must comply with § 704.10 of this part if the credit quality of the counterparty deteriorates below the minimum credit quality standards established by the corporate's board of directors.

* * * * *

■ 10. In Appendix C:

■ a. Remove the definition of *Traded position* from paragraph I(b);

■ b. Revise paragraphs II (a)(2)(viii)(A), II (a)(2)(viii)(B) introductory text, II (b)(1)(iv), II (b)(2)(ii), and II (b)(4):

■ c. Remove paragraphs II (c)(3) and (4);

■ d. Add new paragraph II (c)(3); and

■ e. Redesignate paragraph II (c)(5) and (6) as paragraphs II (c)(4) and (5), respectively.

The revisions and addition read as follows:

Appendix C to Part 704—Risk-Based Capital Credit Risk-Weight Categories

* * * * *

Part II: Risk-Weightings

(a) * * *

(2) * * *

(viii) * * *

(A) A qualifying securities firm must meet the minimum credit quality standards as established by the corporate credit union's board of directors or have at least one issue of long-term unsecured debt that is reasonably determined to present no more than a minimal amount of credit risk, whichever requirement is more stringent. Alternatively, a qualifying securities firm may rely on the creditworthiness of its parent consolidated company, if the parent consolidated company guarantees the claim.

(B) A collateralized claim on a qualifying securities firm does not have to comply with the requirements of paragraph (a) of this section of Appendix C if the claim arises under a contract that:

* * * * *

(b) * * *

(1) * * *

(iv) Unused portions of ABCP liquidity facilities that do not meet the definition of an eligible ABCP liquidity facility. The resulting credit equivalent amount is assigned to the risk category appropriate to the assets to be funded by the liquidity facility based on the assets or the obligor, after considering any collateral or guarantees.

(2) * * *

(ii) Unused portions of commitments (including home equity lines of credit and eligible ABCP liquidity facilities) with an original maturity exceeding one year except those listed in paragraph II (b)(5) of this Appendix. For eligible ABCP liquidity facilities, the resulting credit equivalent amount is assigned to the risk category appropriate to the assets to be funded by the liquidity facility based on the assets or the obligor, after considering any collateral or guarantees.

* * * * *

(4) 10 percent credit conversion factor (Group D). Unused portions of eligible ABCP liquidity facilities with an original maturity of one year or less. The resulting credit equivalent amount is assigned to the risk category appropriate to the assets to be funded by the liquidity facility based on the assets or the obligor, after considering any collateral or guarantees.

* * * * *

(c) * * *

(3) Internal ratings-based approach—

(i) Calculation. Corporate credit unions with advanced risk management and reporting systems may seek NCUA approval to use credit risk models to calculate risk-weighted asset amounts for positions described in paragraphs II (c)(1) and (2) of this section of the Appendix C. In determining whether to grant approval, NCUA will consider the financial condition and risk management sophistication of the corporate credit union and the adequacy of the corporate's risk models and supporting management information systems.

(ii) Consistent use of internal ratings-based approach. A corporate credit union that has been granted NCUA approval to use an internal ratings-based approach and that has determined to use such an approach must do so in a consistent manner for all securities so rated.

* * * * *

PART 709—INVOLUNTARY LIQUIDATION OF FEDERAL CREDIT UNIONS AND ADJUDICATION OF CREDITOR CLAIMS INVOLVING FEDERALLY INSURED CREDIT UNIONS IN LIQUIDATIONS

■ 11. The authority citation for part 709 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1767, 1786(h), 1787, 1788, 1789, 1789a.

■ 12. In § 709.10, revise paragraph (a)(5) to read as follows:

§ 709.10 Treatment by conservator or liquidating agent of financial assets transferred in connection with a securitization or participation.

* * * * *

(a) * * *

(5) *Securitization* means the pooling and repackaging by a special purpose entity of assets or other credit exposures that can be sold to investors. Securitization includes transactions that

create stratified credit risk positions whose performance is dependent upon an underlying pool of credit exposures, including loans and commitments.

PART 741—REQUIREMENTS FOR INSURANCE

■ 13. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

■ 14. In § 741.3, revise paragraph (a)(2) by adding a sentence between the first and second sentences to read as follows:

§ 741.3 Criteria.

(a) * * *
(2) * * * For purposes of this paragraph, if a state-chartered credit union conducts and documents an analysis that reasonably concludes an investment is at least investment grade, as defined in § 703.2 of this chapter, and the investment is otherwise permissible for Federal credit unions, that investment is not considered to be beyond those authorized by the Act or the NCUA Rules and Regulations. * * *

[FR Doc. 2012–30076 Filed 12–12–12; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 713

RIN 3133–AD98

Fidelity Bond and Insurance Coverage

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is adopting as a final rule, without change, the interim final rule that the Board issued in May 2012 that amended NCUA's fidelity bond rule. The interim final rule removed references in the fidelity bond rule to NCUA's former Regulatory Flexibility Program (RegFlex), which granted a RegFlex credit union broader authority to choose the deductible amount of its fidelity bond policy.

DATES: Effective December 13, 2012, the interim final rule published May 31, 2012, at 77 FR 31981, is adopted as final without change.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Associate General Counsel, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION: The NCUA Board (Board) is adopting as a final rule, without change, the interim final rule that the Board issued in May 2012 that amended NCUA's fidelity bond rule.¹ The interim final rule removed references in the fidelity bond rule to NCUA's former Regulatory Flexibility Program (RegFlex), which granted a RegFlex credit union broader authority to choose the deductible amount of its fidelity bond policy.² Specifically, the interim final rule amended the standard used for granting authority to a federal credit union (FCU) to choose an increased deductible amount. Before the Board issued the interim final rule, the standard was based on an FCU's assets and status as a RegFlex FCU. The standard used after the interim final rule is based on an FCU's assets, CAMEL ratings, and capital level. The new standard is also used by NCUA in other rules affected by the elimination of RegFlex.

I. Background

II. Comments

III. Regulatory Procedures

I. Background

What did the interim final rule change and why is NCUA adopting this final rule?

In issuing a proposed rule in 2011 to remove part 742 from NCUA's regulations and eliminate the RegFlex Program,³ NCUA inadvertently overlooked references to RegFlex in its fidelity bond rule.⁴ At that time, the fidelity bond rule established a formula for calculating the maximum deductible an FCU could carry on its fidelity bond based partly on the FCU's asset size. The rule set a cap of \$200,000, but permitted RegFlex FCUs with assets in excess of \$1 million a higher maximum deductible of up to \$1 million.⁵ With the issuance of the final rule to eliminate RegFlex, the NCUA Board also issued an interim final rule to amend the fidelity bond rule.⁶

The interim final rule changed the regulatory standard for permitting an FCU to have an increased deductible on its fidelity bond. As noted, the standard used before the interim final rule was that a RegFlex FCU with assets in excess of \$1 million had such authority. The

standard used after the interim final rule is that such authority is granted to an FCU with assets in excess of \$1 million that is, among other things, well capitalized.⁷

Specifically, the interim final rule permits an FCU to choose a maximum deductible amount for its fidelity bond coverage of \$1 million if the FCU has: (1) Received a composite CAMEL rating of "1" or "2" during its last two full examinations and (2) maintained a "well capitalized" net worth classification for the immediately preceding six quarters or has remained "well capitalized" for the immediately preceding six quarters after applying the applicable risk-based net worth requirement.

Once a year, an FCU meeting the interim final rule's well capitalized standard must review its continued eligibility for a higher deductible under the rule, which is the same approach applied by the Board when it adopted the fidelity bond provisions in 2005.⁸ An FCU's continued eligibility will be based on its asset size as reflected in its most recent year-end 5300 call report and its net worth as reflected in that same report. If an FCU that previously qualified for the higher deductible limit has a decrease in assets based on its most recent year-end 5300 call report or its net worth has decreased so that it would no longer qualify under the well capitalized standard in the fidelity bond rule, then it must obtain the coverage otherwise required by Part 713 with an appropriate deductible. A similar result occurs if an FCU meets the assets threshold and its net worth continues to qualify it under the well capitalized standard, but it has failed to receive a CAMEL rating of "1" or "2" during its most recent examination report.

II. Comments

NCUA received no written responses to its request for comment on the interim final rule.⁹ Accordingly, the NCUA Board adopts as final, without change, the interim final rule published in May 2012.¹⁰

III. Regulatory Procedures

Regulatory Flexibility Act

NCUA must prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under ten million dollars in assets). The final rule reframes a

¹ 77 FR 31981 (May 31, 2012).

² The Board established RegFlex in 2002. 66 FR 58656 (Nov. 23, 2001). RegFlex relieved FCUs from certain regulatory restrictions and granted them additional powers if they demonstrated sustained superior performance as measured by CAMEL rating and net worth classification.

³ 76 FR 81421 (Dec. 28, 2011).

⁴ 12 CFR 713.6.

⁵ 12 CFR 713.6(a)(1), (c).

⁶ 77 FR 31981 (May 31, 2012).

⁷ See 70 FR 61713 (Oct. 26, 2005) for a broader perspective of the regulatory history of part 713.

⁸ Id. at 61714.

⁹ 77 FR 31981 (May 31, 2012).

¹⁰ Id.