own protection insurance to compensate the Contractor for any unallowable or non-reimbursable costs incurred in connection with contract performance.

(End of clause)

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 703, 723, and 742

RIN 3133–AD98

Eligible Obligations, Charitable Contributions, Nonmember Deposits, Fixed Assets, Investments, Member Business Loans, and Regulatory Flexibility Program

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: NCUA proposes to eliminate the Regulatory Flexibility Program (RegFlex) to provide regulatory relief to Federal credit unions. NCUA also proposes to remove or amend related rules to ease compliance burden while retaining certain safety and soundness standards. Those rules pertain to eligible obligations, charitable contributions, nonmember deposits, fixed assets, investments, and member business loans.

DATES: Send your comments to reach us on or before February 27, 2012. We may not consider comments received after the above date in making our decision on the proposed rule.

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

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. NCUA Web Site: *http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov*. Include ''[Your name] Comments on Proposed Rule 742, Regulatory Flexibility Program'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: You can view all public comments on NCUA's Web site at *http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx* as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGCMail@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Chrisanthy Loizos, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540, or Matthew J. Biliouris, Director of Supervision, or J. Owen Cole, Director, Division of Capital Markets, Office of Examination and Insurance, at the above address or telephone (703) 518–6360.

SUPPLEMENTARY INFORMATION:

I. Background

a. Why is NCUA proposing this rule?

On July 11, 2011, President Obama issued Executive Order 13579, ordering independent agencies, including NCUA, to consider whether they can modify, streamline, expand, or repeal existing rules to make their programs more effective and less burdensome.[1] Consistent with the spirit of the Executive Order and as part of NCUA's Regulatory Modernization Initiative, the NCUA Board (Board) has decided to propose a rule that streamlines its regulatory program by eliminating RegFlex. The proposed rule would relieve regulatory burden on Federal credit unions (FCUs) because they would no longer need to engage in any process for a RegFlex designation. In addition, FCUs that are currently not RegFlex eligible would receive regulatory relief because the proposal extends to them most of the flexibilities previously available only to RegFlex FCUs.

b. What is RegFlex?

RegFlex relieves FCUs from certain regulatory restrictions and grants them additional powers if they have demonstrated sustained superior performance as measured by CAMEL rating and net worth classification. 12 CFR 742.1. An FCU may qualify for RegFlex treatment automatically or by application to the appropriate regional director. 12 CFR 742.2. Specifically, an FCU automatically qualifies when it has received a composite CAMEL rating of ''1'' or ''2'' during its last two examinations and has maintained a net worth classification of ''well capitalized'' under part 702 of NCUA's rules for the last six quarters. If an FCU is subject to a risk-based net worth (RBNW) requirement under part 702, it also qualifies for RegFlex treatment when it has remained ''well capitalized'' for the last six quarters after applying the applicable RBNW requirement. An FCU that does not automatically qualify may apply for a RegFlex designation with the appropriate regional director. 12 CFR 742.2(a) and (b).

The Board established RegFlex in 2002. 66 FR 58656 (Nov. 23, 2001). Since then, NCUA has amended RegFlex a number of times to increase available relief for FCUs from a variety of regulatory restrictions, reduce the criteria to obtain RegFlex status, or enhance safety and soundness for FCUs. 71 FR 4039 (Jan. 25, 2006); 72 FR 30247 (May 31, 2007); 74 FR 13083 (Mar. 26, 2009); 75 FR 66298 (Oct. 28, 2010).

The current RegFlex rule provides RegFlex FCUs with relief from restrictions in the following six areas or ''flexibilities'': (1) Charitable contributions; (2) nonmember deposits; (3) fixed assets; (4) zero-coupon investments; (5) borrowing repurchase transactions; and (6) commercial mortgage related securities. It also provides an additional flexibility by specifically authorizing the purchase of obligations from federally insured credit unions beyond those an FCU may purchase under the NCUA's eligible obligations rule, § 701.23.

II. The Rule as Proposed

a. How would this rule change RegFlex and reduce regulatory burden on FCUs?

NCUA proposes to eliminate RegFlex and the charitable contributions rule, and amend the rules that apply to eligible obligations, nonmember deposits, fixed assets, and investments. With this proposal, the Board intends to enable FCUs to engage in the activities permitted by the existing RegFlex rule. As of June 30, 2011, there are 4,534 FCUs, 2,764 of which are RegFlex FCUs. The proposed changes would extend regulatory relief to the remaining 1,770 FCUs that do not currently enjoy a RegFlex designation. NCUA requests

[1] President Obama also signed the Plain Writing Act of 2010 (Pub. L. 111–274) into law on October 13, 2010 ''to improve the effectiveness and accountability of Federal agencies to the public by promoting clear Government communication that the public can understand and use.'' This preamble is written to meet plain writing objectives.

your comments on the proposed rulemaking.

The proposed rule places most of the six flexibilities of the RegFlex rule into the subject-specific rules that apply to all FCUs. Under the existing rule, RegFlex FCUs do not have to comply with the charitable contributions rule. The proposed rulemaking, therefore, removes the charitable contributions rule so that all FCUs may make donations based on sound judgment and business practices without regulatory restrictions. At present, RegFlex FCUs do not have to comply with the limits on nonmember deposits. The NCUA Board has reviewed the amount of nonmember deposits currently held by FCUs and proposes an adjustment to the nonmember deposits rule to allow FCUs to accept more nonmember deposits. Likewise, the proposed rulemaking extends the amount of time in which FCUs must occupy unimproved property to six years, as currently permitted for RegFlex FCUs. Finally, the proposed amendments to the investment rule permit extended maturities for zero-coupon investments and borrowing repurchase transactions as well as the ability to purchase commercial mortgage related securities under similar conditions to the existing RegFlex rule. In addition, the proposed rule moves the provisions to buy nonmember and other obligations currently found in the RegFlex rule, into the eligible obligations rule, § 701.23.

This proposal closely follows the analyses the Board previously used when it adopted the various flexibilities in the RegFlex rule. While the proposed rule extends relief to FCUs, the Board recognizes the relief granted by this proposal may not be appropriate for every FCU. Only FCUs with the requisite expertise and policies to engage in the activities addressed in this rulemaking, as well as the financial condition necessary for particular activities, should avail themselves of the proposed new authorities. Each FCU's board of directors bears the ultimate responsibility for its FCU's direction and control. NCUA may also take appropriate supervisory action to address unsafe and unsound practices or conditions.

b. Does this rule create greater restrictions than the current rules?

No, although the proposal modifies some of the RegFlex flexibilities. The Board proposes to establish a maximum maturity of 30 years for zero-coupon investments even though the RegFlex rule does not currently subject RegFlex FCUs to a maturity limit on these investments. The Board believes the maturity cap will have no negative impact on these FCUs. The proposed rule also removes the automatic exemption from the nonmember deposits limit, but the Board does not foresee any adverse impact on FCUs with the proposed change.

RegFlex FCUs currently operating under the automatic exemption criteria for a RegFlex designation will generally continue to be able to avail themselves of the flexibilities found in part 742. Under the proposal, FCUs that received a RegFlex designation from a regional director because they did not meet the standards for automatic qualification will now, like current non-RegFlex FCUs, have certain conditions placed on their previous RegFlex flexibilities, unless they receive approval for additional authority. The Board discusses these conditions further in the section-by-section analysis.

III. Section-by-Section Analysis

NCUA proposes to remove part 742 in its entirety to eliminate RegFlex. NCUA also proposes to remove or amend the related rules that apply to eligible obligations, charitable contributions, nonmember deposits, fixed assets, investments, and member business loans. As the Board noted when it first adopted RegFlex, the regulatory provisions covered in RegFlex are not specifically required by statute. This proposed rulemaking aims to ease compliance burden and permit greater flexibility for FCUs in managing their operations, while simultaneously retaining certain safety and soundness standards.

The Board also intends to delete an FCU's ability to appeal the revocation of its RegFlex designation to the NCUA's Supervisory Review Committee. NCUA Interpretive Ruling and Policy Statement (IRPS) 11–1, 76 FR 23871 (Apr. 29, 2011). If the Board eliminates RegFlex designations as proposed, there will be no need for such an appeal. In that event, the Board intends to issue a direct final IRPS that would remove RegFlex revocations from the list of material supervisory determinations an FCU may appeal under NCUA IRPS 11–1.

a. Charitable Contributions

FCUs make charitable contributions under the provision in the FCU Act that authorizes an FCU ''to exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated.'' 44 FR 56691 (Oct. 2, 1979); 64 FR 19441 (Apr. 21, 1999); 12 U.S.C. 1757(17).

The current charitable contributions rule, § 701.25, restricts an FCU's ability to make donations. It only allows an FCU to make charitable contributions or donations to nonprofit organizations located in or conducting activities in a community in which the FCU has a place of business, or to organizations that are tax exempt under § 501(c)(3) of the Internal Revenue Code and operate primarily to promote and develop credit unions. The rule requires an FCU's board of directors to approve charitable contributions based on a determination that the contributions are in the best interests of the FCU and are reasonable given the FCU's size and financial condition. Under the rule, directors may establish a budget for charitable donations and authorize FCU officials to select recipients and disburse funds. The RegFlex rule, § 742.4(a)(1), exempts RegFlex FCUs from the entire charitable contributions rule.

The Board proposes to eliminate the entire charitable contributions rule, § 701.25, so that any FCU can make donations without the prior approval of its board of directors and without regulatory restrictions as to recipients. The Board notes that, even in the absence of a charitable contributions rule, an FCU's authority to make donations is dictated by its incidental powers authority given in the FCU Act. As such, contributions must be necessary or requisite to enable the FCU to effectively carry on its business. *See* 12 CFR 721.2. Furthermore, FCU directors have a fiduciary duty to direct management to operate within sound business practices and the best interests of the membership under § 701.4. In addition, article XVI, section 4 of the FCU Bylaws prohibits FCU directors, committee members, officers, agents, and employees from conflicts of interest that could arise in the context of making charitable donations.

b. Nonmember Deposits

The FCU Act permits an FCU to receive shares from nonmember public units, political subdivisions [2] and credit

[2] The terms ''public unit'' and ''political subdivision'' in the nonmember deposit rule are defined in paragraphs (c) and (d) of § 745.1. ''Public unit'' means the United States, any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, any territory or possession of the United States, any county, municipality, or political subdivision thereof, or any Indian tribe as defined in section 3(c) of the Indian Financing Act of 1974. ''Political subdivision'' includes any subdivision of a public unit or any principal department of such public unit, (1) The creation of which subdivision or department has been expressly authorized by state statute, (2) to which some functions of government have been delegated by state statute, and (3) to which funds have been allocated by

unions, but the FCU is subject to the limits in the nonmember deposits rule, § 701.32. 12 U.S.C. 1757(6); 12 CFR 701.32. Under paragraph (b) of § 701.32, the maximum amount of all public unit and nonmember shares that an FCU may hold cannot exceed the greater of 20% of the FCU's total shares or $1.5 million. This means that an FCU holding less than $7.5 million in total shares cannot accept nonmember deposits in excess of $1.5 million, as 20% of $7.5 million is $1.5 million. Under paragraph (c) of § 701.32, nonmember share deposits that an FCU has accepted to meet a matching requirement for a Community Development Revolving Loan Fund loan counts against the nonmember deposit limit once the FCU has repaid the loan. An FCU may request an exemption from the appropriate regional director to exceed the limit. If the regional director denies the request for an exemption, the FCU may appeal the decision to the Board. The RegFlex rule currently exempts RegFlex FCUs from both paragraphs (b) and (c) of § 701.32. RegFlex FCUs, therefore, are not subject to the limit on the amount of deposits they may accept from nonmember public units and credit unions.

Currently, only four RegFlex FCUs exceed the limitation in § 701.32(b) of the greater of 20% of total shares or $1.5 million in nonmember deposits. Each of those FCUs holds more than $1.5 million in nonmember deposits, but less than $3 million. The Board, therefore, proposes to raise the dollar threshold on the nonmember deposit limit in § 701.32(b) to $3 million. The increase in the dollar limit would permit FCUs with less than $7.5 million in total shares to accept up to $3 million in nonmember deposits, compared to their current $1.5 million limit. The Board acknowledges that, by eliminating RegFlex, RegFlex FCUs would lose their blanket exemption from the nonmember deposit cap. From its review of the nonmember deposits presently held by RegFlex FCUs, however, the Board believes the proposal provides all of the necessary flexibility and regulatory relief to all FCUs without adversely affecting any of the RegFlex FCUs that have accepted nonmember deposits in excess of the cap. The Board also continues to recognize the risks that nonmember shares may present. Nonmember shares are characteristically more volatile than core member shares. This additional volatility can pose asset liability management concerns and liquidity concerns. The proposed adjustment to the dollar threshold in paragraph (b)(1) maintains the regulatory relief that RegFlex FCUs have enjoyed, extends relief to FCUs, and remains attentive to safety and soundness considerations.

c. Fixed Assets

The FCU Act authorizes an FCU to purchase, hold, and dispose of property necessary or incidental to its operations. 12 U.S.C. 1757(4). Generally, the fixed asset rule provides limits on fixed asset investments, establishes occupancy and other requirements for acquired and abandoned premises, and prohibits certain transactions. 12 CFR 701.36. Fixed assets are defined in § 701.36(e) and include premises. Premises means any office, branch office, suboffice, service center, parking lot, facility, or real estate where a credit union transacts or will transact business.

When an FCU acquires premises for future expansion and does not fully occupy the space within one year, the rule requires the FCU's board of directors to have a resolution in place by the end of that year with plans for full occupation. 12 CFR 701.36(b)(1). Additionally, the FCU must partially occupy the premises within three years, unless the FCU obtains a waiver within 30 months of acquiring the premises. 12 CFR 701.36(b)(1)–(2). Where an FCU is acquiring unimproved land, the partial occupancy requirement often is more difficult to satisfy than if the FCU were purchasing premises with an existing branch building. The existing fixed assets rule and the RegFlex rule extend the three-year time period to six years for RegFlex FCUs, but only with respect to the acquisition of unimproved land. 12 CFR 701.36(d), 742.4(a)(3).

The Board proposes to amend the fixed assets rule to extend the three-year time period to six years for any FCU that is acquiring unimproved land. This extension would not apply, however, to any other kind of premises. As it discussed in previous rulemakings, the Board is aware that the fixed asset rule's three-year partial occupancy requirement, even with a waiver option, may be burdensome for some FCUs. NCUA recognizes many real estate transactions are complex and time consuming. These transactions involve a full array of issues that an FCU must address before it is ready to occupy the premises. This is especially true in the unimproved land context with its construction-related issues. The Board believes it is appropriate to now extend relief from this compliance burden to all FCUs by allowing an FCU up to six years to partially occupy some of the space on a full-time basis if it initially acquired the property as unimproved land. Under the proposed change to paragraph (b)(2) in § 701.36, all FCUs would have additional flexibility they need to manage their fixed asset portfolios, consistent with safe and sound credit union operations.

d. Zero-Coupon Investments

Under § 703.16(b), an FCU may not purchase a zero-coupon investment with a maturity date that is more than 10 years from the related settlement date. The RegFlex rule exempts RegFlex FCUs from the maximum maturity length of 10 years in the investment rule. 12 CFR 742.4(a)(4). When creating the exemption for RegFlex FCUs, the Board determined it would not have a significant adverse impact on safety and soundness and would increase potential yield with prudent asset liability management. 66 FR 58656, 58659 (Nov. 23, 2001).

Since the adoption of the RegFlex rule, however, NCUA has carefully reviewed the strategic and risk management considerations for permitting the use of long-term zero-coupon investments in credit union portfolios. NCUA has concluded that such long-term investments generally are not appropriate. Zero-coupon investments with maturities exceeding 10 years have higher price sensitivity than other securities, including shorter-term zero-coupon investments. This increased price sensitivity, together with the lack of interim cash flows, makes long-term zero-coupon investments inconsistent with the primary portfolio objectives of safety and liquidity.

The table below shows approximate percentage declines in the price of zero-coupon investments and coupon-bearing Treasury bonds from a 300 basis point increase in rates. The percentage loss on zero-coupon investments increases dramatically with maturity and greatly exceeds that on coupon-bearing Treasury bonds at maturities greater than 10 years. Losses of this magnitude could also make FCUs reluctant to sell zero-coupon investments and recognize losses during periods of liquidity stress.

statute or ordinance for its exclusive use and control. It also includes drainage, irrigation, navigation improvement, levee, sanitary, school or power districts and bridge or port authorities, and other special districts created by state statute or compacts between the states. Subordinate or nonautonomous divisions, agencies, or boards within principal departments are not included.

Maturity (Years)	% Change in Price (from +300 bps) Zero-Coupon Treasury	% Change in Price (from +300 bps) Coupon Treasury
2	4	4
5	12	12
10	25	21
20	44	30
30	58	39

Source: Bloomberg—TRA function, October 7, 2011.

To balance the risk management concerns inherent in zero-coupon investments with the flexibility previously granted to RegFlex FCUs, the Board proposes to establish the maximum maturity date of zero-coupon investments to 30 years for any FCU that meets a ''well capitalized standard'' for purposes of this rulemaking. An FCU meeting the ''well capitalized standard'' is an FCU that has received a composite CAMEL rating of ''1'' or ''2'' during its last two examinations and (1) has maintained a ''well capitalized'' net worth classification for the immediately preceding six quarters, or (2) has remained ''well capitalized'' for the immediately preceding six quarters after applying the applicable RBNW requirement. The Board expects that FCUs considering the purchase of zero-coupon investments will be familiar with the dramatic rise in percentage loss on these investments with maturity, as demonstrated in the table. Only FCUs with the appropriate level of expertise positioned to measure the safety and soundness of purchasing zero-coupons with extended maturities should consider such investments.

To ensure the proposed rule does not eliminate the flexibility currently enjoyed by RegFlex FCUs, the proposed rule ''grandfathers'' zero-coupon investments purchased in accordance with current § 742.4(a)(4) before the effective date of the final rule. As such, the rule would not require an FCU that, under its RegFlex authority, purchased zero-coupon investments with maturities greater than 10 years to divest these investments so long as those investments are on the FCU's books before the effective date of the final rule.

An FCU that does not meet the well capitalized standard will be held to the requirement currently found in § 703.16(b). It may not purchase a zero-coupon investment with a maturity date that is more than 10 years from the related settlement date, unless the FCU has received approval from its regional director to purchase such an investment with a greater maturity.

To achieve the Board's objectives, the Board proposes to remove the current prohibition from § 703.16, amend §§ 703.14 and 703.18, and add a new § 703.20. The proposed rule adds the purchase of zero-coupon investments to § 703.14(i) as a permissible investment under certain conditions. An FCU may only purchase a zero-coupon investment with a maturity date of up to 10 years from the related settlement date, unless it receives written approval from its regional director to purchase such investment with a longer maturity under new proposed § 703.20. FCUs meeting the well capitalized standard may purchase zero-coupon investments with maturity dates no greater than 30 years. Finally, the proposed rule adds a grandfather provision to § 703.18 for zero-coupon investments purchased under RegFlex authority before the effective date of the final rule.

e. Borrowing Repurchase Transactions

A borrowing repurchase transaction is a transaction in which an FCU agrees to sell a security to a counterparty and to repurchase the same or an identical security from that counterparty at a specified future date and at a specified price. 12 CFR 703.2. Subject to additional restrictions, an FCU may enter into a borrowing repurchase transaction so long as any investments the FCU purchases with borrowed funds mature no later than the maturity of the borrowing repurchase transaction. 12 CFR 703.13(d).

As stated, the investment rule prohibits an FCU from purchasing a security with the proceeds from a borrowing repurchase agreement if the purchased security matures after the maturity of the borrowing repurchase agreement. 12 CFR 703.13(d)(3). NCUA adopted this restriction because FCUs could incur significant interest rate risk by borrowing funds at short-term interest rates and investing in long-term fixed rate instruments. Interest rate risk results if an FCU invests the proceeds of the transaction significantly shorter or longer than the borrowing transaction.

NCUA, however, adopted a limited exemption for RegFlex FCUs from the maturity restriction. 68 FR 32958, 32959 (June 3, 2003). In so doing, the Board recognized that NCUA does not impose a similar prohibition for other borrowing arrangements. The RegFlex rule permits RegFlex FCUs to purchase securities with maturities exceeding the maturity of the borrowing repurchase transaction, also commonly referred to as having mismatched maturities. The amount of any such purchased securities, however, cannot exceed the credit union's net worth under § 742.4(a)(5).

The Board proposes to continue this flexibility of mismatched maturities for borrowing repurchase transactions for FCUs meeting the well capitalized standard. The Board also proposes extending relief from the maturity requirement to FCUs that do not meet the well capitalized standard. The proposal amends paragraph (d)(3) of § 703.13 to permit FCUs to enter into borrowing repurchase transactions and use the proceeds to purchase securities with maturities no more than 30 days later than the transaction's term and the value of the purchased assets does not exceed the FCU's net worth. FCUs that do not meet the well capitalized standard may also request additional authority from their regional directors under proposed § 703.20 to enter transactions whereby the maturity mismatch would be greater than 30 days. The proposed rule also adds a grandfather provision to § 703.18 for borrowing repurchase transactions that an FCU entered under its RegFlex authority before the effective date of the final rule.

The proposed § 703.13(d)(3), therefore, sets out the three possible scenarios for borrowing repurchase transactions. In the first instance, the borrowing and corresponding investment transactions must have matched maturities. In the second instance, the matched maturity requirement would not apply if an FCU buys investments that mature no more than 30 days later than the borrowing repurchase transaction and the value of those investments does not exceed 100 percent of the FCU's net worth. In the third instance, an FCU that meets the well capitalized standard may enter borrowing repurchase transactions with mismatched maturities greater than 30 days if the value of the investments does not exceed 100 percent of the FCU's net worth.

The Board proposes that an FCU that does not meet the well capitalized standard enter a borrowing repurchase agreement with a maturity mismatch between the repurchase agreement and the reinvested funds not to exceed 30 days. The Board seeks comment on whether the regulation should specify minimum experience requirements for staff involved in the analysis and ongoing risk management of a repurchase-agreement book, especially in cases where maturities of sources and uses are mismatched.

f. Commercial Mortgage Related Security

Section 703.16(d) of NCUA's investment rule generally prohibits an FCU from purchasing commercial

mortgage related securities (CMRS) of an issuer other than a government-sponsored enterprise. This prohibition is consistent with section 107(7)(E) of the FCU Act. 12 U.S.C. 1757(7)(E). Under § 107(15)(B) of the FCU Act, however, FCUs are permitted to purchase mortgage related securities (as defined in section 3(a)(41) of the Securities Exchange Act of 1934, as amended). 12 U.S.C. 1757(15)(B). That definition includes mortgage related securities backed solely by residential mortgages, solely by CMRS, and by mixed residential and commercial mortgages. Although section 107(15)(B) and section 107(7)(E) permit different kinds of investments for FCUs, some overlap exists between the two. Specifically, some CMRS described in section 107(15)(B) also fit the description of investments permitted by section 107(7)(E). 67 FR 78996, 78997 (Dec. 27, 2002).

Based on its analysis of the interplay of these sections in the FCU Act and the development of the CMRS market, NCUA permitted RegFlex FCUs to purchase CMRS that are not otherwise permitted by section 107(7)(E) of the FCU Act, subject to certain safety and soundness related restrictions. 68 FR 32958 (June 3, 2003).

Under the existing RegFlex rule, § 742.4(a)(6), RegFlex FCUs may purchase CMRS that are not otherwise permitted by section 107(7)(E) if: (i) The security is rated in one of the two highest rating categories by at least one nationally-recognized statistical rating organization (NSRO);[3] (ii) the security meets the definition of mortgage related security as defined in 15 U.S.C. 78c(a)(41) and the definition of CMRS in § 703.2; (iii) the pool of loans underlying the CMRS contains more than 50 loans with no one loan representing more than 10 percent of the pool; and (iv) the FCU does not purchase an aggregate amount of CMRS in excess of 50 percent of its net worth. The Board proposes to permit all FCUs to purchase private label CMRS under certain conditions.

The proposed rule removes the § 703.16 prohibition barring the purchase of private label CMRS and adds the authority as a permissible investment in proposed § 703.14(j), with limits based on whether the FCU meets the well capitalized standard. An FCU that meets the well capitalized standard may purchase private label CMRS under the same parameters currently found in § 742.4(a)(6). An FCU that does not meet the well capitalized standard may purchase private label CMRS if: (i) The security is rated in one of the two highest rating categories by at least one NSRO (as amended in accordance with Section 939A of Dodd-Frank); (ii) the security meets the definition of mortgage related security as defined in 15 U.S.C. 78c(a)(41) and the definition of CMRS in § 703.2; (iii) the pool of loans underlying the CMRS contains more than 50 loans with no one loan representing more than 10 percent of the pool; and (iv) the FCU does not purchase an aggregate amount of private label CMRS in excess of 25 percent of its net worth, unless it receives authority from the applicable regional director to purchase a higher amount. Proposed § 703.20 provides the approval process so that an FCU may exceed the aggregate cap on CMRS of 25% net worth up to a maximum of 50% of net worth. As part of its request for approval, an FCU must demonstrate three consecutive years of effective CMRS portfolio management and the ability to evaluate key risk factors.

Finally, the proposed rule adds a grandfather provision to § 703.18 for private label CMRS purchased by an FCU under its RegFlex authority before the effective date of the final rule. As such, an FCU that does not meet the well capitalized standard under the proposal, but which holds private label CMRS in excess of 25% of its net worth, would not be required to divest of those holdings on its books when the final rule takes effect. Such an FCU, however, could not make additional purchases of CMRS while its aggregate CMRS holdings exceed 25% of its net worth, without the approval from the appropriate regional director under proposed § 703.20.

The Board acknowledges that the proposed authority, as with all of the flexibilities that would be granted under this proposed rulemaking, is not appropriate for every FCU. Selection of CMRS consistent with safety and soundness requires careful analysis of the underlying commercial mortgages and corresponding collateral, as well as analysis of the cash flow, credit structure, and market performance of the security. As with all investments, FCUs must understand and be capable of managing the risks associated with CMRS before purchasing them. The investment rule's § 703.3 requires an FCU's board of directors to develop investment policies that address credit, liquidity, interest rate, and concentration risks. 12 CFR 703.3. The policy must also identify the characteristics of any investments that are suitable for the FCU. FCUs that purchase CMRS must develop sound risk management policies and construct limits that represent the FCU board's risk tolerance.

The Board also notes that the proposal does not diminish NCUA's authority to require an FCU to divest its investments or assets for substantive safety and soundness reasons. Divestiture is a safety and soundness remedy imposed on a case-by-case basis.

The Board seeks comment on whether the conditions for purchasing CMRS in the rule should be enhanced to encourage diversity and mitigate risk. NCUA is concerned from its recent experience that the current rule may contain inadequate limitations.

g. Eligible Obligations

The eligible obligations rule permits an FCU to purchase loans from any source, provided that two conditions are satisfied. 12 CFR 701.23. First, the borrower is a member of that FCU. Second, the loan is either of a type the FCU is empowered to grant or the FCU refinances the loan within 60 days of its purchase to meet that standard. 12 CFR 701.23(b)(1)(i). The phrase ''empowered to grant'' refers to an FCU's authority to make the type of loans permitted by the FCU Act, NCUA regulations, FCU Bylaws, and an FCU's own internal policies. NCUA OGC Op. 04–0713 (Oct. 25, 2004). The rule also permits an FCU to purchase student loans and real estate-secured loans, from any source, if the purchasing FCU grants these loans on an ongoing basis and is purchasing either type of loan to facilitate the packaging of a pool of such loans for sale or pledge on the secondary market. 12 CFR 701.23(b)(1)(iii)–(iv). An FCU may also purchase the obligations of a liquidating credit union's individual members from the liquidating credit union. 12 CFR 701.23(b)(ii). The eligible obligations rule imposes restrictions, including a limit on the aggregate amount of loans that an FCU may purchase of 5 percent of the purchasing FCU's unimpaired capital and surplus. 12 CFR 701.23(b)(3). It excludes certain types of loans from this limit, including loans purchased to facilitate a sale or pledge on the secondary market. 12 CFR 701.23(b)(3).

The current RegFlex rule permits RegFlex FCUs to buy loans from other federally insured credit unions without regard to whether the loans are eligible obligations of the purchasing FCU's

[3] As required by Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), the Board issued a proposal on March 1, 2011 to change this prong with the following language: ''The issuer has at least a very strong capacity to meet its financial obligations, even under adverse economic conditions, for the projected life of the security.'' 76 FR 11164 (Mar. 1, 2011). If and when a final rule is adopted, a similar conforming change will be made as necessary for this rulemaking.

members or the members of a liquidating credit union. 12 CFR 742.4(b). Loans purchased from a liquidating credit union, however, are subject to the eligible obligations cap of 5 percent unimpaired capital and surplus. 12 CFR § 742.4(b)(4); 66 FR 15055, 15059 (Mar. 15, 2001). RegFlex FCUs may also purchase student loans and real-estate secured loans without the need to purchase them in order to facilitate a secondary market pool package under current § 742.4(b). When the Board adopted the rule, it relied on its legal analysis of sections 107(13) and 107(14) in the FCU Act to provide the relief to RegFlex FCUs. Section 107(13) of the FCU Act authorizes the purchase of eligible obligations of an FCU's members or the members of a liquidating credit union. 12 U.S.C. 1757(13). Section 107(14) of the FCU Act allows an FCU to purchase all or part of the assets of another credit union. 12 U.S.C. 1757(14). In relying on the authority of Section 107(14) to adopt the eligible obligation provision in the RegFlex rule, the Board acknowledged that it was taking a more expansive interpretation than it had in the past, but that the interpretation was consistent with other FCU powers. 66 FR 58656, 58660 (Nov. 23, 2001); 51 FR 15055, 15059 (Mar. 15, 2001). In adopting this provision in the RegFlex rule, NCUA intended to expand the liquidity options for RegFlex FCUs, provide them with enhanced regulatory flexibility, and enhance the safety and soundness of the credit union system.

The proposed rule retains the flexibility provided currently in the RegFlex rule for FCUs meeting the well capitalized standard by transferring the provisions of current § 742.4(b) to a renumbered § 701.23 as paragraph (b)(2). The Board also proposes to grandfather all obligations purchased by RegFlex FCUs under the existing § 742.4(b) as addressed in the proposed paragraph (b)(5) of § 701.23. NCUA proposes a similar amendment to paragraph (e) in § 723.1 to address nonmember business loans purchased under RegFlex authority or proposed § 701.23(b)(2).

The Board requests specific comment on whether it should extend the flexibility from the eligible obligations rule as discussed to all FCUs. Are there safety and soundness concerns that prevent the Board from extending this authority to all FCUs? Alternatively, should the final rule permit FCUs that do not meet the well capitalized standard to request approval from regional directors, similar to the proposed process for expanded investment authority?

h. Summary of Proposed Sections

In a further effort to comply with the Plain Writing Act of 2010 (Pub. L. 111–274), the Board includes the following table to assist readers in following the various proposed authorities for well capitalized FCUs and FCUs that do not meet the well capitalized standard. We are providing this table for your reference only. Please refer to the preamble and proposed regulatory text for specific information about the proposed rule.

Proposed rule authority	FCUs meeting well capitalized standard	FCUs not meeting well capitalized standard
Charitable Contributions	Well capitalized FCUs may make donations consistent with their incidental powers authority and board's fiduciary duties.	This flexibility would be extended to all FCUs.
Non-member Deposits	May accept up to the greater of 20% total shares or $3 million. May request exemption from regional director for greater amount.	This flexibility would be extended to all FCUs. (The proposed rule raises the dollar threshold from $1.5 million to $3 million. An FCU with less than $15 million in total shares may now accept up to $3 million in nonmember deposits.)
Unimproved Property for Future Expansion	May take up to six years to partially occupy unimproved property purchased for future expansion.	This flexibility would be extended to all FCUs.
Zero-coupon Investments*	May purchase Zero-coupon investments with maturity dates up to 30 years.	May purchase Zero-coupon investments with maturity dates up to 10 years. May request authority from regional director for maturities up to 30 years.
Borrowing Repurchase Transaction*	May enter into Borrowing Repurchase Transactions where the underlying investments mature later than the borrowing, up to 100 percent of net worth.	May enter into Borrowing Repurchase Transactions where the underlying investments mature no later than 30 days after the borrowing, up to 100 percent of net worth. May request authority from regional director for longer maturity mismatch.
Private Label Commercial Mortgage Related Security (CMRS)*.	Not restricted to purchasing only CMRS issued by Fannie Mae or Freddie Mac. May purchase Private Label CMRS if: (i) the security is rated in one of the two highest rating categories by at least one NSRO; (ii) it is a ''mortgage related security'' under the Securities Exchange Act of 1934 and § 703.2; (iii) the pool of loans underlying the CMRS contains more than 50 loans with no one loan representing more than 10 percent of the pool; and (iv) the FCU does not purchase an aggregate amount in excess of 50 percent of net worth.	Similar flexibilities would be extended to all FCUs, under the following conditions: Requirements (i)–(iii) would be the same as for Well Capitalized FCUs. The limit in requirement (iv) would be 25 percent of net worth. May request approval from the regional director for higher limit, up to 50 percent of net worth, if FCU has 3 consecutive years of effective CMRS portfolio management and the ability to evaluate key risk factors.

Proposed rule authority	FCUs meeting well capitalized standard	FCUs not meeting well capitalized standard
Purchase of Eligible Obligations (EOs)*	In addition to the authority in the current § 701.23, may buy loans from other federally insured credit unions without regard to whether the loans are EOs of the purchasing FCU's members. May also purchase nonmember student loans and real estate loans without the need to purchase them in order to facilitate a secondary market pool package. Also may purchase loans from a liquidating credit union regardless of whether the loans were made to liquidating CU's members, subject to the aggregate cap on eligible obligations of 5 percent of unimpaired capital and surplus.	May purchase EOs under the conditions in the current § 701.23 (subject to membership or pooling requirements).

* All authorized activity entered into before effective date is grandfathered.

i. Request for Comment

The Board asks for your comment on whether the proposed rulemaking accomplishes the following: (1) Reduces compliance burden for FCUs; (2) assists them in improving financial performance; and (3) better enables them to provide member services, including extensions of credit. The Board also asks for your comment as to whether FCUs without consistently strong examination ratings and levels of net worth have the ability to manage the risks of the proposed expanded authorities. For instance, if NCUA grants additional authority regarding the maturity limit restrictions on zero-coupon investments or borrowing repurchase transactions for FCUs, that either do not meet the well capitalized standard or lack demonstrated expertise in managing particular investment risk, does it raise significant liquidity or safety and soundness concerns?

IV. Regulatory Procedures

a. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small entities (primarily those under ten million dollars in assets). This proposed rule reduces compliance burden and extends regulatory relief while maintaining existing safety and soundness standards. NCUA has determined this proposed rule will not have a significant economic impact on a substantial number of small credit unions, so NCUA is not required to conduct a regulatory flexibility analysis.

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 USC 3507(d); 5 CFR part 1320. For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections.

The proposed rule contains an information collection in the form of a voluntary written request for additional authorities from a regional director under proposed § 703.20. An FCU that does not meet the ''well capitalized standard'' may submit a written request to its regional director to request expanded authority above any or all of the following provisions in the proposed rule: (1) The borrowing repurchase transaction maximum maturity mismatch of 30 days under proposed § 703.13(d)(3)(ii), (2) the zero-coupon investment 10-year maximum maturity under proposed § 703.14(i), up to a maturity of no more than 30 years, and (3) the aggregate commercial mortgage related security limit of 25% of net worth under proposed § 703.14(j), up to no more than 50% of net worth. An FCU meets the ''well capitalized'' standard if the FCU has received a composite CAMEL rating of ''1'' or ''2'' during its last two examinations and (1) has maintained a ''well capitalized'' net worth classification for the immediately preceding six quarters, or (2) has remained ''well capitalized'' for the immediately preceding six quarters after applying the applicable RBNW requirement. The Board estimates 1,770 FCUs may apply for an additional authority under § 703.20. The cumulative total annual paperwork burden is estimated to be approximately 1,770 hours.

NCUA considers comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the NCUA, including whether the information will have a practical use;
- Evaluating the accuracy of the NCUA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are required to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The PRA requires the Office of Management and Budget (OMB) to make a decision concerning the collection of information contained in the proposed regulation between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to NCUA on the proposed regulation.

Comments on the proposed information collection requirements should be sent to: Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street NW., Washington, DC 20503; Attention: NCUA Desk Officer, with a copy to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

c. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This proposed rule would

not have a substantial direct effect on the states, on the relationship 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 proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

e. Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether this proposed rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects

12 CFR part 701

Credit unions.

12 CFR part 703

Credit unions, Investments.

12 CFR part 723

Credit, Credit unions, Reporting and recordkeeping requirements.

12 CFR part 742

Credit unions, reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 15, 2011.

Mary Rupp,

Secretary of the Board.

For the reasons discussed above, NCUA proposes to amend 12 CFR parts 701, 703, 723, and 742 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

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

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.,* 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. In § 701.23:

a. Redesignate paragraphs (b)(2) and (3) as paragraphs (b)(3) and (4);

b. Add new paragraph (b)(2);

c. In newly redesignated paragraph (b)(4) introductory text, remove the phrase ''under paragraph (b) of this section'' and add in its place ''under paragraphs (b)(1) and (b)(2)(ii) of this section'';

d. Add paragraph (b)(5) to read as follows:

The additions read as follows:

§ 701.23 Purchase, sale, and pledge of eligible obligations.

* * * * *

(b) * * *

(2) *Purchase of obligations from a FICU.* A Federal credit union that received a composite CAMEL rating of ''1'' or ''2'' for the last two (2) examinations and maintained a net worth classification of ''well capitalized'' under part 702 of this chapter for the six (6) immediately preceding quarters or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained ''well capitalized'' for the six (6) immediately preceding quarters after applying the applicable RBNW requirement may purchase and hold the following obligations, provided that it would be empowered to grant them:

(i) *Eligible obligations.* Eligible obligations pursuant to paragraph (b)(1)(i) of this section without regard to whether they are obligations of its members, provided they are purchased from a federally-insured credit union only;

(ii) *Eligible obligations of a liquidating credit union.* Eligible obligations of a liquidating credit union pursuant to paragraph (b)(1)(ii) of this section without regard to whether they are obligations of the liquidating credit union's members.

(iii) *Student loans.* Student loans pursuant to paragraph (b)(1)(iii) of this section, provided they are purchased from a federally-insured credit union only;

(iv) *Mortgage loans.* Real-estate secured loans pursuant to paragraph (b)(1)(iv) of this section, provided they are purchased from a federally-insured credit union only;

* * * * *

(5) *Grandfathered purchases.* Subject to safety and soundness considerations, a Federal credit union may hold any of the loans described in paragraph (b)(2) of this section provided it was authorized to purchase the loan and purchased the loan before [EFFECTIVE DATE OF FINAL RULE].

* * * * *

§ 701.25 [Removed and Reserved]

3. Remove and reserve § 701.25.

§ 701.32 [Amended]

4. In § 701.32, amend paragraph (b)(1) by removing ''$1.5 million'' after the words ''federal credit union'' and adding in its place ''$3 million''.

5. Amend § 701.36 by revising paragraph (b)(2) and removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

The revision reads as follows:

§ 701.36 FCU ownership of fixed assets.

* * * * *

(b) * * *

(2) When a Federal credit union acquires premises for future expansion, it must partially occupy the premises within a reasonable period, not to exceed three years, unless the credit union has acquired unimproved real property for future expansion. The NCUA may waive this partial occupation requirement in writing upon written request. The request must be made within 30 months after the property is acquired. If the Federal credit union has acquired unimproved real property to develop for future expansion, it must partially occupy the premises within a reasonable period, not to exceed six years.

* * * * *

PART 703—INVESTMENTS AND DEPOSIT ACTIVITIES

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

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

7. In § 703.13, revise paragraph (d)(3) to read as follows:

§ 703.13 Permissible investment activities.

* * * * *

(d) * * *

(3) The investments referenced in paragraph (d)(2) of this section must mature under the following conditions:

(i) No later than the maturity of the borrowing repurchase transaction;

(ii) No later than thirty days after the borrowing repurchase transaction, unless authorized under § 703.20, provided the value of the investments does not exceed 100 percent of the Federal credit union's net worth; or

(iii) At any time later than the maturity of the borrowing repurchase transaction, provided the value of the investments does not exceed 100 percent of the Federal credit union's net worth and the credit union received a composite CAMEL rating of ''1'' or ''2'' for the last two (2) examinations and maintained a net worth classification of ''well capitalized'' under part 702 of this chapter for the six (6) immediately preceding quarters or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained ''well capitalized'' for the six (6) immediately preceding quarters after applying the applicable RBNW requirement.

* * * * *

8. Amend § 703.14 by adding paragraphs (i) and (j) to read as follows:

§ 703.14 Permissible investments.

* * * * *

(i) *Zero-coupon investments.* A Federal credit union may only purchase a zero-coupon investment with a maturity date that is no greater than 10 years from the related settlement date, unless authorized under § 703.20 or otherwise provided in this paragraph. A Federal credit union that received a composite CAMEL rating of ''1'' or ''2'' for the last two (2) examinations and maintained a net worth classification of ''well capitalized'' under part 702 of this chapter for the six (6) immediately preceding quarters or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained ''well capitalized'' for the six (6) immediately preceding quarters after applying the applicable RBNW requirement may purchase a zero-coupon investment with a maturity date that is no greater than 30 years from the related settlement date.

(j) *Commercial mortgage related security (CMRS).* A Federal credit union may purchase a CMRS permitted by Section 107(7)(E) of the Act; and, pursuant to Section 107(15)(B) of the Act, a CMRS of an issuer other than a government-sponsored enterprise enumerated in Section 107(7)(E) of the Act, provided:

(1) The CMRS is rated in one of the two highest rating categories by at least one nationally-recognized statistical rating organization;

(2) The CMRS meets the definition of mortgage related security as defined in 15 U.S.C. 78c(a)(41) and the definition of commercial mortgage related security as defined in § 703.2 of this part;

(3) The CMRS's underlying pool of loans contains more than 50 loans with no one loan representing more than 10 percent of the pool; and

(4) The aggregate amount of private label CMRS purchased by the Federal credit union does not exceed 25 percent of its net worth, unless authorized under § 703.20 or as otherwise provided in this subparagraph. A Federal credit union that has received a composite CAMEL rating of ''1'' or ''2'' for the last two (2) examinations and maintained a net worth classification of ''well capitalized'' under part 702 of this chapter for the six (6) immediately preceding quarters or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained ''well capitalized'' for the six (6) immediately preceding quarters after applying the applicable RBNW requirement, may hold private label CMRS in an aggregate amount not to exceed 50% of its net worth.

§ 703.16 [Amended]

9. In § 703.16, remove paragraph (b) and paragraph (d) and redesignate paragraphs (c), (e), and (f) as paragraphs (b), (c), and (d), respectively.

10. In § 703.18, redesignate paragraph (b) as paragraph (c) and add new paragraph (b) read as follows:

§ 703.18 Grandfathered investments.

* * * * *

(b) A Federal credit union may hold a zero-coupon investment with a maturity greater than 10 years, a borrowing repurchase transaction in which the investment matures at any time later than the maturity of the borrowing, or CMRS that cause the credit union's aggregate amount of CMRS from issuers other than government-sponsored enterprises to exceed 25% of its net worth, in each case if it purchased the investment or entered the transaction under the Regulatory Flexibility Program before [EFFECTIVE DATE OF FINAL RULE].

11. Add § 703.20 to read as follows:

§ 703.20 Request for additional authority.

(a) *Additional authority.* A Federal credit union may submit a written request to its regional director seeking expanded authority above the following limits in this part:

(1) Borrowing repurchase transaction maximum maturity mismatch of 30 days under § 703.13(d)(3)(ii).

(2) Zero-coupon investment 10-year maximum maturity under § 703.14(i), up to a maturity of no more than 30 years.

(3) CMRS aggregate limit of 25% of net worth under § 703.14(j), up to no more than 50% of net worth. To obtain approval for additional authority, the Federal credit union must demonstrate three consecutive years of effective CMRS portfolio management and the ability to evaluate key risk factors.

(b) *Written request.* A Federal credit union desiring additional authority must submit a written request to the NCUA regional office having jurisdiction over the geographical area in which the credit union's main office is located, that includes the following:

(1) A copy of your investment policy;

(2) The higher limit sought;

(3) An explanation of the need for additional authority;

(4) Documentation supporting your ability to manage the investment or activity; and

(5) An analysis of the credit union's prior experience with the investment or activity.

(c) *Approval process.* A regional director will provide a written determination on a request for expanded authority within 60 calendar days after receipt of the request; however, the 60-day period will not begin until the requesting credit union has submitted all necessary information to the regional director. The regional director will inform the requesting credit union, in writing, of the date the request was received and of any additional documentation that the regional director might require in support of the request. If the regional director approves the request, the regional director will establish a limit on the investment or activity as appropriate and subject to the limitations in this part. If the regional director does not notify the credit union of the action taken on its request within 60 calendar days of the receipt of the request or the receipt of additional requested supporting information, whichever occurs later, the credit union may proceed with its proposed investment or investment activity.

(d) *Appeal to NCUA Board.* A Federal credit union may appeal any part of the determination made under paragraph (c) to the NCUA Board by submitting its appeal through the regional director within 30 days of the date of the determination.

PART 723—MEMBER BUSINESS LOANS

12. The authority citation for part 723 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

13. In § 723.1 revise paragraph (e) to read as follows:

§ 723.1 What is a member business loan?

* * * * *

(e) *Purchases of nonmember loans and nonmember loan participations.* Any interest a credit union obtains in a nonmember loan, pursuant to § 701.22, § 701.23(b)(2), under a Regulatory Flexibility Program designation before [EFFECTIVE DATE OF FINAL RULE] or other authority, is treated the same as a member business loan for purposes of this rule and the risk weighting standards under part 702 of this chapter, except that the effect of such interest on a credit union's aggregate member business loan limit will be as set forth in § 723.16(b) of this part.

PART 742—[REMOVED]

16. Under the authority of 12 U.S.C. 1756 and 1766, the National Credit Union Administration removes part 742.

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