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**7535-01-U**

## **NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Parts 701, 707, 714, 748, and 749**

**RIN 3133-AE13**

### **Regulations Affecting Credit Unions; Technical Amendments**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** The NCUA Board (Board) is making a number of technical amendments to NCUA's regulations to conform them to the changes required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and based on NCUA's rolling, three-year regulatory review.

**DATES:** This rule is effective on [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

**FOR FURTHER INFORMATION, CONTACT:** Frank Kressman, Associate General Counsel, or Justin Anderson, Staff Attorney, Office of General Counsel, (703) 518-6556, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

**II. Regulatory Amendments**

**III. Regulatory Procedures**

**I. Background**

**Why is NCUA issuing this rule?**

The Dodd-Frank Act, among other things, transferred rulemaking authority for many consumer protection regulations from the Federal Reserve Board (FRB) to the Consumer Financial Protection Bureau (CFPB).<sup>1</sup> This transfer required that these regulations be renumbered, which in turn made certain citations in NCUA's regulations inaccurate. The Dodd-Frank Act also transferred rulemaking authority related to the Alternative Mortgage Transaction Parity Act (AMTPA)<sup>2</sup> for state-chartered credit unions from NCUA to the CFPB.<sup>3</sup>

In addition, the Board is taking this opportunity to make amendments, unrelated to the Dodd-Frank Act, based on its rolling, three-year review of NCUA's regulations. The Board reviews one-third of its regulations each year to "update, clarify and simplify

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<sup>1</sup> Public Law 111–203, sec.1061.

<sup>2</sup> 12 U.S.C. 3801 et seq.

<sup>3</sup> Public Law 111–203, sec. 1083.

existing regulations and eliminate redundant and unnecessary provisions.”<sup>4</sup> Through this process, NCUA has identified an incorrect citation in Appendix B to part 707 and outdated or unnecessary requirements in NCUA’s security and records preservation program requirements in parts 748 and 749.

Accordingly, this rule updates citation references to former FRB rules in parts 701, 707, and 714, and removes the reference to AMPTA in § 701.21(a). The rule also makes technical amendments to parts 707, 748, and 749. The Board is issuing these amendments as a final rule because they are technical in nature and some changes are statutorily mandated by the Dodd-Frank Act.

## **II. Regulatory Amendments**

### **1. Parts 701, 707, and 714 - Updated Citations to CFPB Regulations**

This rule updates citations to CFPB regulations in parts 701, 707, and 714. Specifically, in part 701, the Board is amending citations to Regulation B.<sup>5</sup> Similarly, the Board is amending citations in part 707 and in the appendices to part 707 to Regulations E, Z, and DD.<sup>6</sup> In part 707, the Board is clarifying references to the FRB’s Regulation D,<sup>7</sup> as the Dodd-Frank Act created a separate Regulation D under the purview of the CFPB.<sup>8</sup> Finally, in part 714, the Board is amending the citation to Regulation M.<sup>9</sup>

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<sup>4</sup> NCUA Interpretive Ruling and Policy Statement (IRPS) 87-2, as amended by IRPS 03-02, “Developing and Reviewing Government Regulations.”

<sup>5</sup> 12 CFR part 1002.

<sup>6</sup> 12 CFR parts 1005, 1026, and 1030.

<sup>7</sup> 12 CFR part 204.

<sup>8</sup> 12 CFR part 1004.

<sup>9</sup> 12 CFR part 1013.

## **2. Section 701.21 – AMTPA**

This rule removes the reference to AMTPA in section 701.21(a) as required by section 1083 of the Dodd-Frank Act.<sup>10</sup> This reference authorized state-chartered credit unions to follow NCUA's lending regulations for alternative mortgage transactions. Based on the Dodd-Frank Act amendments, state-chartered credit unions must now follow the CFPB's Regulation D for alternative mortgage transactions.<sup>11</sup> Accordingly, the Board is removing the reference to AMTPA in § 701.21(a).

## **3. Part 707, Appendix B**

The rule amends an incorrect citation to the FRB's Regulation D in the note to sample form B-5.

## **4. Part 748, Appendix A**

Part 748 requires a federally insured credit union to develop a written security program and also sets forth Bank Secrecy Act compliance programs and procedures. In 2001, the Board amended part 748 and issued Appendix A to part 748, Guidelines for Safeguarding Member Information, to fulfill a requirement in section 501(b) of the Gramm-Leach-Bliley Act (GLBA).<sup>12</sup> The GLBA directed financial institution regulators, including NCUA, and several other government agencies to consult and coordinate with each other to prescribe consistent and comparable regulations to establish standards

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<sup>10</sup> Public Law 111-203, sec. 1083.

<sup>11</sup> 71 FR 44226 (July 22, 2011).

<sup>12</sup> 66 FR 8161 (Jan. 20, 2001).

for financial institutions relating to certain administrative, technical, and physical safeguards of member records and information.<sup>13</sup>

Included in the 2001 amendments was section III(G) of Appendix A to part 748, which set forth the schedule for implementing Appendix A. All of the dates in the schedule expired at least six years ago. Accordingly, the Board is removing that section of Appendix A to part 748 as the implementation schedule is no longer necessary or helpful to credit unions.

#### **5. Part 749, Appendix A**

Part 749 sets out the procedures that federally insured credit unions must follow for records preservation and retention. Section E(1)(c) of Appendix A to part 749 states that credit unions should permanently retain all current manuals, circular letters, and other official instructions of a permanent character received from NCUA and other governmental agencies. This requirement has become outdated. All publications noted in this section are maintained electronically on NCUA's website and other governmental agencies' websites or are otherwise available to credit unions. Accordingly, the Board is removing this section, which will help reduce the burden and cost on credit unions for the storage and retention of these items.

### **III. Regulatory Procedures**

#### **Final Rule**

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<sup>13</sup> 15 U.S.C. 6801(b), 6804, 6805.

Generally, the Administrative Procedure Act (APA) requires a federal agency to provide the public with notice and the opportunity to comment on agency rulemakings. The amendments in this rule are non-substantive and technical. They make minor changes, some of which are statutorily required by the Dodd-Frank Act. The APA permits an agency to forego the notice and comment period under certain circumstances, such as when a rulemaking is technical and non-substantive. NCUA finds good cause that notice and public comment are unnecessary under section 553(b)(3)(B) of the APA.<sup>14</sup> NCUA also finds good cause to dispense with the 30-day delayed effective date requirement under section 553(d)(3) of the APA.<sup>15</sup> The rule will, therefore, be effective immediately upon publication.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis on any significant economic impact any regulation may have on a substantial number of small entities (primarily those under \$10 million in assets).<sup>16</sup> NCUA has determined that these technical amendments will not have a significant economic impact on a substantial number of small credit unions.

#### 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

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<sup>14</sup> 5 U.S.C. 553(b)(3)(B).

<sup>15</sup> 5 U.S.C. 553(d)(3).

<sup>16</sup> 5 U.S.C. 603(a).

burden.<sup>17</sup> 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.

These technical corrections do not impose any paperwork burden.

### 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 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 because it simply makes technical corrections to existing regulations.

NCUA has determined this rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

### The Treasury and General Government Appropriations Act, 1999 – Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act of 1999.<sup>18</sup>

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<sup>17</sup> 44 U.S.C. 3507(d); 5 CFR part 1320.

<sup>18</sup> Pub. L. 105-277, 112 Stat. 2681 (1998).

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121)

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) 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 APA.<sup>19</sup>

The Office of Management and Budget has determined that this rule is not a “major rule” within the meaning of SBREFA.

**List of Subjects**

**12 CFR Part 701**

Credit unions, Mortgages.

**12 CFR Part 707**

Advertising, Credit unions, Reporting and recordkeeping requirements, Truth in savings.

**12 CFR Part 714**

Credit unions, Leasing.

**12 CFR Part 748**

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<sup>19</sup> 5 U.S.C. 551.

Credit unions, Reporting and recordkeeping requirements, Security measures.

**12 CFR Part 749**

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 19, 2012.

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Mary F. Rupp

Secretary of the Board

For the reasons stated above, NCUA amends 12 CFR parts 701, 707, 714, 748, and 749 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, 1758, 1759, 1761A, 1761B, 1766, 1767, 1782, 1784, 1786, 1787, 1789, Section 701.6 is also authorized by 15 U.S.C.

1601 et seq., 42 U.S.C. 1981 and 3601-3610, Section 701.35 is also authorized by 42 U.S.C. 4311—4312.

2. In § 701.21, revise the fifth sentence of paragraph (a) to read as follows:

**§701.21 Loans to members and lines of credit to members.**

- (a) \* \* \* Also, while § 701.21 generally applies to Federal credit unions only, certain provisions apply to loans made by federally insured, state-chartered credit unions as specified in § 741.203 of this chapter. \* \* \*

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**§ 701.31 [Amended]**

3. In § 701.31, amend paragraph (a)(1) by removing “12 CFR 202.2(f)” and adding in its place “12 CFR 1002.2(f)”.

**PART 707—TRUTH IN SAVINGS**

4. The authority citation for part 707 continues to read as follows:

**Authority:** 12 U.S.C. 4311.

**§ 707.3 [Amended]**

5. In § 707.3, amend paragraph (c) in two places by removing “12 CFR part 205” and adding in its place “12 CFR part 1005”.

#### **§ 707.11 [Amended]**

6. Amend § 707.11 in paragraphs (b)(2)(i) and (c) by removing “part 226” and adding in its place “part 1026”.

#### **Appendix B to Part 707 [Amended]**

7. Amend appendix B to part 707 as follows:
  - a. In the fourth sentence of the third paragraph of the General Note by removing the phrase “as did the FRB” and adding in its place the phrase “as articulated”;
  - b. In model clause B-1, first note to section (H), by adding the words “the Federal Reserve Board’s” between the words “to” and “Regulation.”; and
  - c. In the note to sample form B-5 by removing “12 CFR 202.4(c)(2)” and adding in its place “12 CFR 204.2(c)(2)”.

#### **Appendix C to Part 707 [Amended]**

8. Amend appendix C to part 707 as follows:

- a. In the entry for section 707.2, under “(a),” paragraph 5 v by removing “12 CFR 230.2(u)” and adding in its place “12 CFR 1030.2(u)” and adding to the last sentence the words “Federal Reserve Board’s” between the words “in” and “Regulation D”;
- b. In the entry for section 707.2, under “(s),” paragraph 1 by removing “12 CFR 205.2(j)” and adding in its place “12 CFR 1005.2(k)”;
- c. In the entry for section 707.2, under “(x),” paragraph 1 heading by adding the words “*the Federal Reserve Board’s*” before the words “*Regulation D*” and adding in the first sentence of this section the words “The Federal Reserve Board’s” before the words “Regulation D permits,”;
- d. in the entry for section 707.3, under “(c),” paragraph 1 introductory text by removing “12 CFR part 205” and adding in its place “12 CFR part 1005”;
- e. In the entry for section 707.3, under “(c),” paragraph 1 ii by removing “12 CFR 205.7” and adding in its place “12 CFR 1005.7”;
- f. In the entry for section 707.4, under “(b)(4),” paragraph 5 by removing “12 CFR 205.7” and adding in its place “12 CFR 1005.7”;
- g. In the entry for section 707.6, under “(a),” paragraph 2 by removing “12 CFR 205.9” and adding in its place “12 CFR 1005.9”;

- h. In the entry for section 707.8, under “(a),” paragraph 10 i by removing “12 CFR part 226” and adding in its place “12 CFR part 1026”;
- i. In the entry for section 707.11, under “(a)(1),” paragraph 1 i by removing “12 CFR part 226” and adding in its place “12 CFR part 1026”;
- j. In the entry for section 707.11, under “(a)(1),” paragraph 2 by removing the words “the Federal Reserve Board’s” and removing “12 CFR part 226” and adding in its place “12 CFR part 1026”;
- k. In the entry for section 707.11, under “(b),” paragraph 1 i by removing “12 CFR part 226” and adding in its place “12 CFR part 1026”;
- l. In the entry for section 707.11, under “(b)” paragraph 4 by removing “12 CFR part 226” and adding in its place “12 CFR part 1026”;
- m. In the entry for section 707.11, under “(c),” paragraph 1 by removing the words “part 226” and adding in its place the words “part 1026”; and
- n. In the entry for section 707.11, under “(c),” by removing in two places in paragraph 3 “12 CFR part 226” and adding in its place “12 CFR part 1026” and by removing in two place in paragraph 3 the phrase “the Federal Reserve Board’s” before the words “Regulation Z”.

## **Part 714 – LEASING**

9. The authority citation for part 714 continues to read as follows:

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

**§ 714.10 [Amended]**

10. Amend § 714.10 by removing “12 CFR part 213” and adding in its place “12 CFR part 1013”.

**PART 748 — SECURITY PROGRAM, REPORT OF SUSPECTED CRIMES,  
SUSPICIOUS TRANSACTIONS, CATASTROPHIC ACTS AND BANK SECRECY ACT  
COMPLIANCE**

11. The authority citation for part 748 is revised to read as follows:

**Authority:** 12 U.S.C. 1766(a), 1786(q); 15 U.S.C. 6801-6809; 31 U.S.C. 5311 and 5318.

**Appendix A to Part 748 [Amended]**

12. Amend appendix A to part 748 by removing paragraph III.G.

**PART 749 — RECORDS PRESERVATION PROGRAM AND APPENDICES –  
RECORD RETENTION GUIDELINES; CATASTROPHIC ACT PREPAREDNESS  
GUIDELINES**

13. The authority citation for part 749 continues to read as follows:

**Authority:** 12 U.S.C. 1766, 1783, and 1789; 15 U.S.C. 7001(d).

**Appendix A to Part 749 [Amended]**

14. Amend appendix A to part 749 by removing paragraph E.1.(c).

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