



NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Chapter VII

NCUA-2024-0014

Regulatory Publication and Voluntary Review as Contemplated by the Economic Growth and Regulatory Paperwork Reduction Act of 1996

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notification of regulatory review; request for comments.

SUMMARY: As contemplated by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the NCUA Board (Board) is voluntarily reviewing agency regulations to identify rules that are outdated, unnecessary, or unduly burdensome on federally insured credit unions. The NCUA is not statutorily required to undertake the EGRPRA review; however, the Board has elected to participate in the decennial review process. The NCUA divided its regulations into 10 categories outlined in the included chart. Over the next 2 years, the NCUA will publish four *Federal Register* documents each requesting comment on multiple categories of regulations. This first *Federal Register* document requests comment on regulations concerning the following two categories: “Applications and Reporting,” and “Powers and Activities.” The NCUA will address the remaining eight categories in the next three documents.

DATES: Comments must be received by [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

- Federal eRulemaking Portal: <https://www.regulations.gov>. The docket number for this document is NCUA-2024-0014. Follow the instructions for

submitting comments. A plain language summary of the document is also available on the docket website.

- Mail: Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mailing address.

Public inspection: You may view all public comments on the Federal eRulemaking Portal at <https://www.regulations.gov>, as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. If you are unable to access public comments on the internet, you may contact the NCUA for alternative access by calling (703) 518-6540 or emailing OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Pamela Yu, Special Counsel to the General Counsel, Office of General Counsel, at the above address or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

I. Introduction

Congress enacted section 2222 of the EGRPRA¹ to reduce regulatory burden imposed upon insured depository institutions consistent with safety and soundness, to promote consistency between the Federal banking agencies' regulations, and to support consumer protection. The statute requires that not less frequently than once every 10 years, the Federal Financial Institutions Examination Council (FFIEC),² along with the Federal banking agencies,³

¹ 12 U.S.C. 3311.

² The FFIEC is an interagency body empowered to prescribe uniform principles, standards, and report forms for the Federal examination of financial institutions and to make recommendations to promote uniformity in the supervision of financial institutions. The FFIEC does not issue regulations.

³ The FFIEC is composed of the OCC, FRB, FDIC, NCUA, Consumer Financial Protection Bureau (CFPB), and State Liaison Committee. Of these, only the OCC, FRB, and FDIC are statutorily required to undertake the EGRPRA review. The NCUA Board elected to participate in the first and second EGRPRA reviews and again has elected to participate in this review process. Consistent with its approach during the first and second EGRPRA reviews, the NCUA is issuing documents and requests for comment on its rules separately. The CFPB is required to

conduct a review of their regulations to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions. In conducting this review, the FFIEC or the appropriate Federal banking agencies (Office of the Comptroller of the Currency [OCC], Board of Governors of the Federal Reserve System [FRB], and Federal Deposit Insurance Corporation [FDIC]; herein Agencies⁴) shall (a) categorize their regulations by type and (b) at regular intervals, provide notice and solicit public comment on categories of regulations, requesting commenters to identify areas of regulations that are outdated, unnecessary, or unduly burdensome.⁵

The NCUA is not statutorily required to undertake the EGRPRA review because the NCUA is not an “appropriate Federal banking agency” as specified in EGRPRA. In keeping with the spirit of the law, however, the NCUA Board has once again elected to participate in the decennial review process. Accordingly, the NCUA has participated along with the Agencies in the planning process but has developed its own regulatory categories that are comparable with those developed by the Agencies. Because of the unique circumstances of federally insured credit unions and their members, the Board is issuing a separate document from the Agencies. The NCUA’s document is consistent and comparable with the Agencies’ document, except on issues that are unique to credit unions.

EGRPRA also requires the FFIEC or the Agencies to publish in the *Federal Register* a summary of the comments received, identifying significant issues raised and commenting on these issues. It also directs the Agencies to eliminate unnecessary regulations to the extent that such action is appropriate. Finally, the statute requires the FFIEC to submit to Congress a report

review its significant rules and publish a report of its review no later than 5 years after they take effect. *See* 12 U.S.C. 5512(d). This process is separate from the EGRPRA process.

⁴ The Office of Thrift Supervision (OTS) was still in existence at the time EGRPRA was enacted and was included in the listing of Agencies. Since that time, the OTS has been eliminated and its responsibilities have passed to the Agencies and the CFPB.

⁵ Federally insured credit unions are also subject to regulations that are not reviewed under this decennial review process because they were not promulgated by the NCUA. Examples include rules for which rulemaking authority was transferred to the CFPB and anti-money laundering and Bank Secrecy Act regulations issued by the Department of the Treasury’s Financial Crimes Enforcement Network, among others. If, during this decennial review process, the NCUA receives a comment about a regulation that is not subject to NCUA review, it will forward that comment to the appropriate agency.

that summarizes any significant issues raised in the public comments and the relative merits of those issues. The report also must include an analysis of whether the Agencies are able to address the regulatory burdens associated with such issues or whether these burdens must be addressed by legislative action. The FFIEC report submitted to Congress following the prior EGRPRA reviews included a section discussing the Agencies and banking sector issues and a separate section devoted to the NCUA and credit union issues. It is likely that the FFIEC will follow a similar approach in this third EGRPRA review and report process.

Per the objectives of the decennial review, the Board asks the public to identify areas of the NCUA's regulations that are outdated, unnecessary, or unduly burdensome. In addition to this initial document, the Board will issue three more documents for comment over the course of the next 2 years, at regular intervals. The decennial review supplements and complements the reviews of regulations that the NCUA conducts under other laws and its internal policies.⁶

II. The Decennial Review's Targeted Focus

The decennial regulatory review provides a significant opportunity for the public and the Board to consider groups of related regulations and identify possibilities for streamlining and improvement. The decennial review's overall focus on the totality of regulations will offer a new perspective in identifying opportunities to update and even streamline regulations. For example, the decennial review may facilitate the identification of regulatory requirements that are no longer consistent with the way credit union business is conducted and that, therefore, might be eliminated. Of course, regulatory updates must be compatible with ensuring the continued safety and soundness of federally insured credit unions and the financial system as a whole and with the consumer financial protections.

⁶ Interpretive Ruling and Policy Statement (IRPS) 87-2, 52 FR 35231 (Sept. 8, 1987) as amended by IRPS 03-2, 68 FR 32127 (May 29, 2003) (Reflecting the NCUA's commitment to "periodically update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.").

Any resulting regulatory modifications from the NCUA’s decennial review must also be consistent with the NCUA’s statutory mandates, many of which require the issuance of regulations. EGRPRA recognizes that effective burden reduction may require statutory changes. Accordingly, as part of this review, the Board is specifically soliciting comment from the public on, and reviewing the comments and regulations carefully for, the relationship among burden reduction, regulatory requirements, policy objectives, and statutory mandates. The Board also seeks quantitative data about the impact of rules, where available.

The Board views the approach of considering the relationship of regulatory and statutory change, in concert with EGRPRA’s provisions calling for grouping regulations by type, to provide the potential for particularly effective burden reduction. The Board anticipates the decennial review will also contribute to its ongoing efforts to update and make regulations more efficient. Since 1987, under a formally adopted NCUA policy, the Board reviews each of its regulations at least once every 3 years with a view toward eliminating, simplifying, or otherwise easing the burden of each regulation.⁷ Further, the Board considers regulatory requirements each time it proposes, adopts, or amends a rule. For example, under the Paperwork Reduction Act of 1995,⁸ the Regulatory Flexibility Act,⁹ and internal agency policies, the NCUA assesses each rulemaking with respect to the burdens the rule might impose. The Board also invites the public to comment on proposed rules as generally required by the Administrative Procedure Act.¹⁰

The Board is particularly sensitive to the impact of agency rules on small institutions. The Board currently defines “small entity” as a federally insured credit union with less than \$100 million in assets.¹¹ The Board is cognizant that each new or amended regulation has the potential for requiring significant expenditures of time, effort, and resources to achieve

⁷ IRPS 87-2, 52 FR 35231 (Sept. 8, 1987) as amended by IRPS 03-2, 68 FR 32127 (May 29, 2003).

⁸ 44 U.S.C. 3501-3521.

⁹ 5 U.S.C. 610.

¹⁰ 5 U.S.C. 551-559.

¹¹ NCUA IRPS 15-1, 80 FR 57512 (Sept. 24, 2015).

compliance, and that this burden can be particularly challenging for institutions of smaller asset size, with fewer resources available.

III. The Board's Review Process

EGRPRA contemplates the categorization of regulations by “type.” During its prior decennial reviews, the Board developed and published for comment 10 categories of the NCUA’s regulations, including some that had been issued jointly with the Agencies. The Board believes these prior categories worked well for the purpose of presenting a framework for the review and proposes to use the same categories in this third review.¹² The categories are:

- Agency Programs;
- Applications and Reporting;
- Capital;
- Consumer Protection;¹³
- Corporate Credit Unions;
- Directors, Officers and Employees;
- Anti-Money Laundering and Bank Secrecy Act;
- Powers and Activities;
- Rules of Procedure; and
- Safety and Soundness.

Any rules adopted for the first time since the last decennial review was completed have been incorporated into the appropriate category.¹⁴

¹² Consistent with EGRPRA’s focus on reducing burden on insured depository institutions, the Board has not included internal, organizational, or operational regulations in this review. These regulations impose minimal, if any, burden on federally insured credit unions.

¹³ Some of the rules in the consumer protection category are now under CFPB’s jurisdiction and administration, and those affected rules have been eliminated from the categories in this document.

¹⁴ Commenters should note, in this respect, that for new regulations that have only recently gone into effect, some passage of time may be necessary before the effect associated with the regulatory requirements can be fully and properly understood.

Although there are other possible ways of categorizing its rules, the Board continues to maintain that these 10 categories are logical groupings that are not so broad such that the number of regulations presented in any one category would overwhelm potential commenters. In the Board's view, these categories also reflect recognized areas of stakeholder interest and specialization or are particularly critical to the health of the credit union system. As was noted during the previous reviews, some regulations, such as lending, pertain to more than one category and are included in all applicable categories.

As with the prior decennial reviews, the Board remains convinced that publishing the NCUA's rules for public comment adjacently, but separately, from the Agencies is the most effective method for achieving EGRPRA's burden reduction goals for federally insured credit unions. In addition to not being statutorily required to undertake EGRPRA and owing to differences in the credit union system as compared to the banking system, there is not a direct, category by category, correlation between the NCUA's rules and those of the Agencies. For example, credit union membership, credit union service organizations, and corporate credit unions are all unique to credit union operations. Similarly, certain categories identified by the Agencies in their review process have limited or no applicability in the credit union sector, such as community reinvestment, international operations, and securities. The categories developed by the Board and the Agencies, respectively, reflect these differences. The Board intends to maintain comparability with the Agencies' documents to the extent there is overlap or similarity in the issues and the categories.

Over the next two years, the Board plans to publish four *Federal Register* documents, each addressing one or more categories of rules. Each *Federal Register* document will have a 90-day comment period. This staggered approach will provide stakeholders with sufficient time to focus in on discrete issues and provide comments to the Board. The Board welcomes recommendations on grouping the remaining categories and the order in which to publish them.

Today, the Board is publishing the first of the four documents, addressing the following categories of regulations:

- Applications and Reporting; and
- Powers and Activities.

The Board invites the public to identify outdated, unnecessary, or unduly burdensome regulatory requirements imposed on federally insured credit unions in these two categories. The Board anticipates publishing the remaining eight categories for similar comment periods at regular intervals over the next two years.

The Board has prepared two charts to assist the public's understanding of the organization of its review. The first chart, set forth at section V.A. below, presents the two categories of regulations on which the NCUA is requesting recommendations in this document. The two categories are shown in the left column. In the middle column are the subject matters that fall within the categories and in the far-right column are the regulatory citations. The second chart, set forth at section V.B. below, presents the remaining eight categories in a similar format.

After the conclusion of the comment period for each decennial document published in the *Federal Register*, the Board will review the comments it has received and decide whether further action is appropriate with respect to the categories of regulations included in that document.

IV. Request for Recommendations About the First Two Categories of Regulations:

Applications and Reporting and Powers and Activities

The Board seeks public comment on regulations within the first two categories—Applications and Reporting and Powers and Activities—that may impose outdated, unnecessary, or unduly burdensome regulatory requirements on federally insured credit unions. The NCUA's review efforts would benefit most by comments that cite specific provisions or language and provide reasons why such provisions should be changed. Suggested alternative provisions or text, where appropriate, would also be helpful. If the implementation of a comment would

require modifying a statute that underlies the regulation, the comment should, if possible, identify the needed statutory change.

Specific Issues for Commenters to Consider.

While all comments related to any aspect of the review are welcome, the Board reiterates the posture adopted during the previous decennial reviews and specifically invites comment on the following issues as they pertain to the Board's Applications and Reporting and Powers and Activities rules addressed in this document. The Board will ask these same questions for each document it issues in connection with the decennial process.

- *Need and purpose of the regulations.*
 - Question 1: Have there been changes in the financial services industry, consumer behavior, or other circumstances that cause any regulations in these categories to be outdated, unnecessary, or unduly burdensome? If so, please identify the regulations, provide any available quantitative analyses or data, and indicate how the regulations should be amended.
 - Question 2: Do any of these regulations impose burdens not required by their underlying statutes? If so, please identify the regulations and indicate how they should be amended.
- *Overarching approaches or flexibilities.*
 - Question 3: With respect to the regulations in these categories, could the Board use a different regulatory approach to lessen the burden imposed by the regulations and achieve statutory intent?
 - Question 4: Do any of these rules impose unnecessarily inflexible requirements? If so, please identify the regulations and indicate how they should be amended.
- *Cumulative effects.*
 - Question 5: Looking at the regulations in a category as a whole, are there any requirements that are redundant, inconsistent, or overlapping in such a way that

taken together, impose an unnecessary burden that could potentially be addressed? If so, please identify those regulations, provide any available quantitative analyses or data, and indicate how the regulations should be amended.

- *Effect on competition.*
 - Question 6: Do any of the regulations in these categories create competitive disadvantages for one part of the financial services industry compared to another or for one type of federally insured credit union compared to another? If so, please identify the regulations and indicate how they should be amended.
- *Reporting, recordkeeping, and disclosure requirements.*
 - Question 7: Do any of the regulations in these categories impose outdated, unnecessary, or unduly burdensome reporting, recordkeeping, or disclosure requirements on federally insured credit unions?
 - Question 8: Could a federally insured credit union fulfill any of these requirements through new technologies (if they are not already permitted to do so) and experience a burden reduction? If so, please identify the regulations and indicate how they should be amended.
- *Unique characteristics of a type of institution.*
 - Question 9: Do any of the regulations in these categories impose requirements that are unwarranted by the unique characteristics of a particular type of federally insured credit union? If so, please identify the regulations and indicate how they should be amended.
- *Clarity.*
 - Question 10: Are the regulations in these categories clear and easy to understand?
 - Question 11: Are there specific regulations for which clarification is needed? If so, please identify the regulations and indicate how they should be amended.

- *Impact to minority depository institutions and small insured institutions.* The Board has a particular interest in minimizing burden on minority depository institutions and small insured credit unions (those with less than \$100 million in assets).
 - Question 12: Are there regulations in these categories that impose outdated, unnecessary, or unduly burdensome requirements on a substantial number of minority or small institutions?
 - Question 13: Has the Board issued regulations pursuant to a common statute that, as applied by the NCUA and Agencies, create redundancies or impose inconsistent requirements?
 - Question 14: Should any of these regulations be amended or repealed to minimize this impact? If so, please identify the regulations and indicate how they should be amended.
 - Question 15: Have the effects of any regulations in these categories changed over time that now have a significant economic impact on a substantial number of minority or small institutions? If so, please identify the regulations and indicate how they should be amended. The Board seeks information on (1) the continued need for the rule; (2) the complexity of the rule; (3) the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (4) the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.
- *Scope of rules.*
 - Question 16: Is the scope of each rule in these categories consistent with the intent of the underlying statute(s)?

- Question 17: Could the Board amend the scope of a rule to clarify its applicability or reduce the burden, while remaining faithful to statutory intent? If so, please identify the regulations and indicate how they should be amended.
- *Impact to credit union member-owners.*
 - Question 18: Are there regulations in these categories that unduly or negatively impact credit union member-owners? If so, please identify the regulations and indicate how they should be amended.

*Specific NCUA Regulations Issued Since the Last Decennial Review.*¹⁵

- *Chartering and Field of Membership.*
 - In April 2015, the Board issued a final regulation to amend the associational common bond provisions of the NCUA's chartering and field of membership requirements. Specifically, the amendments established a threshold requirement providing that, for an association to qualify to be part of a Federal credit union's field of membership, the association must not have been formed primarily for the purpose of expanding credit union membership. The amendments also expanded the criteria in the NCUA's totality of the circumstances test, which is a regulatory tool used to determine if an association, after satisfying the above-referenced threshold requirement, also satisfies the associational common bond requirements necessary to qualify for inclusion in a Federal credit union's field of membership. The amendments were intended to better ensure that Federal credit unions comply with established membership requirements. Additionally, the rule granted automatic membership qualification under the associational common bond

¹⁵ For the last decennial review, the Board's first document requesting public comment on the NCUA's regulations was issued on June 4, 2014, with a comment period that ended on September 2, 2014. *See* 79 FR 32191 (June 4, 2014). Accordingly, the Board is currently requesting public comment on the Board's regulations issued since September 2014, that pertain to Applications and Reporting and Powers and Activities.

requirements to certain categories of associations that the NCUA has routinely approved for Federal credit union membership in the past.

- The Board in October 2016 amended its chartering and field of membership rules to maximize access to Federal credit union services to the extent permitted by law, and to organize the rules in a more efficient framework. The amendments implemented changes in policy affecting: the definition of a local community, a rural district, and an underserved area; the chartering and expansion of a multiple common-bond credit union; the expansion of a single common-bond credit union that serves a trade, industry, or profession; and the process for applying to charter, or to expand, a Federal credit union.
- In June 2018, the chartering and field of membership rules were amended with respect to applicants for a community charter approval, expansion, or conversion. The final rule allowed the option for an applicant to submit a narrative to establish the existence of a well-defined local community instead of limiting the applicant to a presumptive statistical community. Under the final rule, the NCUA will hold a public hearing for narrative applications where the proposed community exceeds a population of 2.5 million. Further, for communities that are subdivided into metropolitan divisions, an application may designate a portion of the area as its community without regard to division boundaries.
- In response to an August 2019 opinion and order issued by the D.C. Circuit Court of Appeals, a final rule issued in July 2020 amended the chartering and field of membership rules with respect to applicants and existing Federal credit unions seeking a community charter approval, expansion, or conversion. First, the Board re-adopted a provision to allow an applicant to designate a Combined Statistical Area (CSA), or an individual, contiguous portion thereof, as a well-defined local community, provided that the chosen area has a population of 2.5 million or less.

Second, with respect to communities based on a Core-Based Statistical Area (CBSA), or a portion thereof, the Board provided additional explanation to support its decision to eliminate the requirement to serve the CBSA's core area as provided for in its comprehensive 2016 field of membership rulemaking. Third, the Board clarified existing requirements and added an explicit provision to its rules regarding potential discrimination in the field of membership selection for CSAs and CBSAs.

- *Federal Credit Union Occupancy, Planning and Disposal of Acquired and Abandoned Premises (Fixed Assets); Incidental Powers.*
 - In July 2015, the Board amended its regulation governing Federal credit union ownership of fixed assets. To provide regulatory relief to Federal credit unions, the final rule eliminated a provision in the fixed assets rule that established a 5 percent aggregate limit on investments in fixed assets for Federal credit unions with \$1 million or more in assets. With this elimination, provisions regarding waivers from the aggregate limit were no longer relevant, so the final rule also eliminated those provisions. Instead of applying the prescriptive aggregate limit provided by regulation in the former fixed assets rule, under the final rule, the NCUA oversees Federal credit union ownership of fixed assets through the supervisory process and guidance. The final rule also made conforming amendments to the scope and definitions sections of the fixed assets rule to reflect this modified approach, and it revised the title of § 701.36 to more accurately reflect its amended scope and applicability. In addition, the final rule simplified the regulation's partial occupancy requirements for premises acquired for future expansion by establishing a single 6-year time period for partial occupancy of all premises and by removing the 30-month requirement for partial occupancy waiver requests.

- As part of the NCUA's Regulatory Modernization Initiative, in December 2016, the Board finalized amendments to its regulation governing Federal credit union occupancy, planning, and disposal of acquired and abandoned premises, and its regulation regarding incidental powers. To provide regulatory relief to Federal credit unions, the final rule eliminated a requirement in the occupancy rule (formerly known as the fixed assets rule) that a Federal credit union must plan for, and eventually achieve full occupancy of acquired premises. The final rule generally retained the regulatory timeframes for partial occupancy. However, it modified the definition of "partially occupy" to mean occupation and use on a fulltime basis, of at least 50 percent of the premises by the Federal credit union, or by a combination of the credit union and a credit union service organization in which the Federal credit union has a controlling interest in accordance with generally accepted accounting principles (GAAP). The final rule also amended the excess capacity provision in the NCUA's incidental powers rule to clarify that a Federal credit union may lease or sell excess capacity in its facilities, but it need not anticipate that such excess capacity will be fully occupied by the Federal credit union in the future. However, under the final rule, the sale or lease of excess capacity in equipment or services, including employee-sharing and data processing for third parties continued to be limited to circumstances where a Federal credit union reasonably anticipates that such excess capacity will be taken up by the future expansion of services to members.
- *Member Business Loans; Commercial Lending.* As part of the NCUA's Regulatory Modernization Initiative, in March 2016, the Board amended its member business loans rule to provide federally insured credit unions with greater flexibility and individual autonomy in safely and soundly providing commercial and business loans to serve their members. The final amendments modernized the regulatory requirements governing

credit union commercial lending activities by replacing the former rule’s prescriptive requirements and limitations—such as collateral and security requirements, equity requirements, and loan limits—with a broad principles-based regulatory approach. As such, the amendments also eliminated the waiver process for member business loans, which became unnecessary under a principles-based rule.

- *Investment and Deposit Activities-Bank Notes.* In March 2016, the Board finalized a rule to amend the maturity requirement for bank notes to be permissible investments for Federal credit unions by removing the word “original” from the former requirement that bank notes have “original weighted average maturities of less than 5 years.” The authority for Federal credit unions to invest in bank notes is derived from the provision in the Federal Credit Union Act that permits Federal credit unions to make deposits in, among other things, national and State banks. The statute does not provide authority for Federal credit unions to purchase bank notes that are not deposits; however, it does not define “deposit.” NCUA's previous policy had been to use the definition of deposit in the Federal Reserve Board's Regulation D, which provides, in relevant part, that a liability of a depository institution can be a “deposit” if, among other things, it is insured; it is not subordinated to the claims of depositors; and it has a weighted average maturity of less than five years. Removing the word “original” better aligned the NCUA's requirements for bank notes with the Regulation D definition of a deposit. Further, the amendment allowed Federal credit unions to select from a much larger pool of possible bank note offerings, resulting in cheaper execution prices and greater flexibility and efficiency for Federal credit unions in finding suitable offerings.
- *Emergency Mergers.* In December 2017, the Board issued a final rule to amend its Chartering and Field of Membership Manual definition of the term “in danger of insolvency” for emergency merger purposes. The previous definition, adopted in 2010, required a credit union to fall into at least one of three net worth categories over a period

of time to be “in danger of insolvency.” For two of those three categories, the final rule lengthened by 6 months the forecast horizons, the time periods in which the NCUA projects a credit union’s net worth will decline to the point that it falls into one of the categories. This extended the time period in which a credit union’s net worth is projected to either render it insolvent or drop below 2 percent from 24 to 30 months and from 12 to 18 months, respectively. Additionally, the final rule added a fourth category to the three existing net worth categories to include credit unions that have been granted or received assistance under section 208 of the Federal Credit Union Act in the 15 months prior to the NCUA regional office’s determination that the credit union is in danger of insolvency.

- *Voluntary Mergers of Federally Insured Credit Unions.* The Board issued a final rule in June 2018 to revise the procedures a federally insured credit union must follow to merge voluntarily with another federally insured credit union. The changes revised and clarified the contents and format of the member document; required merging credit unions to disclose certain merger-related financial arrangements for covered persons; increased the minimum member notice period; and provided a method for members and others to submit comments to the NCUA regarding the proposed merger. Additionally, the NCUA replaced its Merger Manual with revised model forms to conform to the requirements of the final rule.
- *Loans to Members and Lines of Credit to Members.*
 - The NCUA’s regulations regarding loans to members and lines of credit to members were amended in March 2019 to reduce regulatory requirements, improve clarity, and make compliance easier. The amendments made the lending regulations more user friendly by: (1) identifying in one section all the various maturity limits applicable to Federal credit union loans; (2) stating that the maturity date for a new loan under GAAP is calculated from the origination date

of the new loan; and (3) more clearly expressing the limits for loans to a single borrower or group of associated borrowers.

- A final rule issued in September 2019 allows Federal credit unions to offer additional payday alternative loans (PALs) to their members. The final rule (referred to as the PALs II rule) did not replace the former PALs rule (referred to as the PALs I rule). Rather, the PALs II rule granted Federal credit unions additional flexibility to offer their members alternatives to traditional payday loans while maintaining many of the key structural characteristics of the PALs I rule.
- *Federal Credit Union Bylaws.*
 - In September 2019, the Board issued a final rule to update, clarify, and simplify the Federal credit union bylaws. The final rule updated and conformed the bylaws to legal opinions issued by the NCUA's Office of General Counsel and provided greater flexibility to Federal credit unions. The final rule also made other changes designed to remove outdated or obsolete provisions.
 - On March 15, 2022, Congress enacted the Credit Union Governance Modernization Act of 2022. Under the statute, the NCUA had 18 months following the date of enactment to develop a policy by which a Federal credit union member may be expelled for cause by a two-thirds vote of a quorum of the credit union's board of directors. In July 2023, the Board issued a final rule to amend the standard Federal credit union bylaws to adopt such a policy.
- *Public Unit and Nonmember Shares.* A final rule issued in October 2019 amended the NCUA's public unit and nonmember share rule to allow Federal credit unions to receive public unit and nonmember shares up to 50 percent of the credit union's net amount of paid-in and unimpaired capital and surplus less any public unit and nonmember shares.

The final rule also made a conforming change to the NCUA's regulations that apply the public unit and nonmember share limit to all federally insured credit unions.

- *Fees Paid by Federal Credit Unions.* In December 2020, the NCUA's regulation governing assessment of an annual operating fee to Federal credit unions was amended. First, for purposes of calculating the annual operating fee, the final rule amended the regulation to exclude from total assets any loan a Federal credit union reports under the Small Business Administration's Paycheck Protection Program or similar future programs approved for exclusion by the Board. Second, the final rule deleted from the regulation references to the Credit Union System Investment Program and the Credit Union Homeowners Affordability Relief Program, both of which no longer exist. Third, the final rule amended the period used for the calculation of a Federal credit union's total assets. Prior to the final rule, total assets were calculated using the credit union's December 31st Call Report of the preceding year. The final rule provided that total assets are calculated as the average total assets reported on the credit union's previous four Call Reports available at the time the Board approves the agency's budget for the upcoming year, adjusted for any excludable programs as determined by the Board.
- *Subordinated Debt.*
 - In December 2020, the Board amended various parts of the NCUA's regulations to permit low-income designated credit unions, complex credit unions, and new credit unions to issue subordinated debt for purposes of regulatory capital treatment. The Board finalized the rule largely as proposed, except for a few changes to various sections based on comments received. Such changes included amending the definition of "accredited investor;" providing a longer timeframe in which a credit union may issue subordinated debt after approval; reducing the required number of years of pro forma financial statements an issuing credit union must provide with its application; clarifying the prohibition on subordinated debt

issuances outside of the United States; and clarifying that the Board will publish a fee schedule only if it makes a determination to charge a fee.

- The Board amended the subordinated debt rule in March 2023 to make two changes related to the maturity of subordinated debt notes and grandfathered secondary capital. Specifically, the final rule replaced the maximum permissible maturity of subordinated debt notes with a requirement that any credit union seeking to issue subordinated debt notes with maturities longer than 20 years demonstrate how such instruments would continue to be considered “debt.” The final rule also extended the regulatory capital treatment of grandfathered secondary capital to the later of 30 years from the date of issuance or January 1, 2052. This extension aligned the regulatory capital treatment of grandfathered secondary capital with the maximum permissible maturity for any secondary capital issued by low-income credit unions under the 2022 U.S. Department of the Treasury’s Emergency Capital Investment Program or other programs administered by the U.S. Government.
- *Derivatives.* A final rule issued in May 2021 amended the NCUA’s derivatives rule to modernize the regulation and make it more principles-based, while retaining key safety and soundness components. The changes provided more flexibility for Federal credit unions to manage interest rate risk through the use of derivatives. The final rule permits written options that comply with the rule’s requirements and amended the collateral requirements for cleared derivatives.
- *Capitalization of Interest in Connection with Loan Workouts and Modifications.* In June 2021, the Board issued a final rule to remove the prohibition on the capitalization of interest in connection with loan workouts and modifications. The final rule also established documentation requirements to help ensure that the addition of unpaid interest

to the principal balance of a mortgage loan does not hinder the borrower's ability to become current on the loan.

- *Credit Union Service Organizations (CUSOs)*. A final rule issued by the Board in October 2021 amended the NCUA's CUSO regulation. The final rule expanded the list of permissible activities and services for CUSOs to include the origination of any type of loan that a Federal credit union may originate; and granted the Board additional flexibility to approve permissible activities and services.
- *Financial Innovation: Loan Participations, Eligible Obligations, and Notes of Liquidating Credit Unions*. In September 2023, the Board amended the NCUA's regulations regarding the purchase of loan participations and the purchase, sale, and pledge of eligible obligations and other loans (including notes of liquidating credit unions). The final rule clarified the NCUA's existing regulations and provided additional flexibility for federally insured credit unions to make use of advanced technologies and opportunities offered by the financial technology (fintech) sector. The final rule also amended the NCUA's rule regarding loans to members and lines of credit to members by adding new provisions about indirect lending arrangements and indirect leasing arrangements.¹⁶

The Board has not identified any rules pertaining to Applications and Reporting and Powers and Activities that would have a significant impact on a substantial number of small entities. However, the Board will consider any public comments submitted through the

¹⁶ In addition to this final rule, the Board in April 2020 issued a temporary final rule to grant temporary regulatory relief in response to COVID-19. The final rule temporarily modified certain regulatory requirements to help ensure that federally insured credit unions remained operational and liquid during the COVID-19 pandemic. Specifically, the Board temporarily raised the maximum aggregate amount of loan participations that a Federal insured credit union may purchase from a single originating lender to the greater of \$5 million or 200 percent of the credit union's net worth. The Board also temporarily suspended limitations on the eligible obligations that a Federal credit union may purchase and hold. In addition, given physical distancing policies implemented in response to the pandemic, the Board tolled the required timeframes for the occupancy or disposition of properties not being used for Federal credit union business or that had been abandoned. Unless extended, these temporary modifications were effective until December 31, 2020. In December 2020, the Board extended the effective date of the temporary final rule to December 31, 2021. The Board further extended the effective date to December 31, 2022, in a December 2021 rule. Because these were temporary final rules that have now expired, the Board is not seeking public comment on these final rules in this document.

decennial review process and agency experience to identify regulations it can update that have a significant impact on a substantial number of small federally insured credit unions.¹⁷

V. The Board's Review of Regulations under the Regulatory Flexibility Act (RFA)

The Board will use the decennial review to satisfy any potential obligations under section 610 of the RFA.¹⁸ There are no rules within the scope of the review that had a significant economic impact on a substantial number of small entities. Regardless, consistent with the spirit of section 610 of the RFA, for each rule the Board has issued in the last 10 years, the Board invites comment on (1) the continued need for the rule; (2) the complexity of the rule; (3) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (4) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. The purpose of the review will be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities.

A. Regulations about which Comment is Currently Requested¹⁹

¹⁷ The review will be consistent with the requirements of a Regulatory Flexibility Act, section 610 review. The Board will determine whether particular rules should be continued without change, amended, or rescinded, consistent with the objectives of applicable statutes, to minimize any significant economic impact of the rules on a substantial number of small federally insured credit unions.

¹⁸ Section 610 of the Regulatory Flexibility Act, 5 U.S.C. 610, imposes a continuing obligation on agencies to review regulations that may have a significant economic impact upon a substantial number of small entities, within 10 years after a final rulemaking is published. The factors agencies consider in evaluating a rule under 5 U.S.C. 610 are (1) the continued need for the rule; (2) the nature of complaints or comments received concerning the rule from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

¹⁹ Section 205(d) of the Federal Credit Union Act prohibits, except with the Board's prior written consent, any person who has been convicted of certain criminal offenses involving dishonesty or breach of trust, or who has entered into a pretrial diversion or similar program in connection with a prosecution for such offense, from participating in the conduct of the affairs of an insured credit union. On December 23, 2022, the President of the United States signed into law the Fair Hiring in Banking Act (FHBA), which significantly revised section 205(d)

Category	Subject	Regulation Cite
1. Applications and Reporting	Change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition	12 CFR 701.14
	Federal credit union chartering, field of membership modifications, and conversions	12 CFR 701.1; Appendix B to Part 701
	Federal credit union bylaws	12 CFR 701.2; Appendix A to Part 701
	Fees paid by Federal credit unions	12 CFR 701.6
	Bank Conversions and Mergers	12 CFR 708a
	Mergers of Insured Credit Unions into Other Credit Unions; Voluntary Termination or Conversion of Insured Status	12 CFR 708b
	Applications for insurance	12 CFR 741.0; 741.3; 741.4
	Financial, statistical, and other reports	12 CFR 741.6
	Conversion to a State-chartered credit union	12 CFR 741.7
	Purchase of assets and assumption of liabilities	12 CFR 741.8
2. Powers and Activities		
a. Lending, Leasing and Borrowing	Loans to members and lines of credit to members	12 CFR 701.21
	Loan participations	12 CFR 701.22
	Purchase, sale, and pledge of eligible obligations	12 CFR 701.23
	Borrowed funds	12 CFR 701.38
	Statutory lien	12 CFR 701.39
	Leasing	12 CFR 714
	Member Business Loans; Commercial Lending	12 CFR 723
	Maximum borrowing	12 CFR 741.2
b. Investment and Deposits	General Investment and Deposit Activities	12 CFR 703, Subpart A
	Derivatives	12 CFR 703, Subpart B
	Loans to credit unions [Subordinated Debt]	12 CFR 701.25
	Federal credit union occupancy and disposal of acquired and abandoned premises	12 CFR 701.36
	Credit Union Service Organizations (CUSOs)	12 CFR 712
	Payment on shares by public units and nonmembers	12 CFR 701.32
	Designation of low-income status	12 CFR 701.34
	Share, share draft, and share certificate	12 CFR 701.35

and was effective immediately. The FHBA appears at section 5705 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, 136 Stat 2395, 3411. On October 19, 2023, the Board approved for publication a proposed rule to incorporate its “Second Chance” Interpretive Ruling and Policy Statement 19-1 and FHBA into its regulations under 12 CFR part 752. *See* 88 FR 76702 (Nov. 7, 2023). The rule is not yet finalized.

	accounts	
	Treasury tax and loan depositories; depositories and financial agents of the Government	12 CFR 701.37
	Refund of interest	12 CFR 701.24
	Trustees and Custodians of Certain Tax-Advantaged Savings Plans	12 CFR 724
c. Miscellaneous Activities	Incidental Powers	12 CFR 721
	Charitable contributions and donations; charitable donation accounts	12 CFR 721.3(b)
	Credit union service contracts	12 CFR 701.26
	Services for nonmembers within the field of membership	12 CFR 701.30
	Suretyship and guaranty	12 CFR 701.20
	Foreign branching	12 CFR 741.11

B. Categories and Regulations about which the NCUA Will Seek Comment Later

3. Agency Programs	Community Development Revolving Loan Fund Access for Credit Unions	12 CFR 705
	National Credit Union Administration Central Liquidity Facility	12 CFR 725
	Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions	12 CFR 701.34
4. Capital	Capital Adequacy	12 CFR 702
	Adequacy of reserves	12 CFR 741.3(a)
5. Consumer Protection	Nondiscrimination requirements [Fair Housing]	12 CFR 701.31
	Truth in Savings	12 CFR 707
	Loans in Areas Having Special Flood Hazards	12 CFR 760
	Fair Credit Reporting; Duties of Users Consumer Report Regarding Address Discrepancies and Records Disposal	12 CFR 717, Subpart I
	Fair Credit Reporting; Identity Theft Red Flags	12 CFR 717, Subpart J
	Share Insurance	12 CFR 745
	Accuracy of Advertising and Notice of Insured Status	12 CFR 740
	Disclosure of share insurance	12 CFR 741.10
	Notice of termination of excess insurance coverage	12 CFR 741.5
	Uninsured membership shares	12 CFR 741.9
	Member inspection of credit union books, records, and minutes	12 CFR 701.3
6. Corporate Credit Unions	Corporate Credit Unions	12 CFR 704
7. Directors, Officers, and Employees	Loans and lines of credit to officials	12 CFR 701.21(d)
	Reimbursement, insurance, and	12 CFR 701.33

	indemnification of officials and employees	
	Benefits for employees of Federal credit unions	12 CFR 701.19
	Management Official Interlocks	12 CFR 711
	Fidelity Bond and Insurance Coverage for Federally Insured Credit Unions	12 CFR 713
	General authorities and duties of Federal credit union directors	12 CFR 701.4
	Golden Parachute and Indemnification Payments	12 CFR 750
8. Anti-Money Laundering and Bank Secrecy Act	Filing of reports [of known or suspected crimes or suspicious transactions]	12 CFR 748.1
	Procedures for monitoring Bank Secrecy Act compliance	12 CFR 748.2
9. Rules of Procedure	Involuntary Liquidation of Federal Credit Unions and Adjudication of Creditor Claims Involving Federally Insured Credit Unions in Liquidation	12 CFR 709
	Voluntary Liquidation	12 CFR 710
	Uniform Rules of Practice and Procedure	12 CFR 747, Subpart A
	Local Rules of Practice and Procedure	12 CFR 747, Subpart B
	Procedures for Appealing Material Supervisory Determinations	12 CFR 746, Subpart A
	Appeals Procedures That Do Not by Law Require a Board Hearing	12 CFR 746, Subpart B
10. Safety and Soundness	Loans to members and lines of credit to members	12 CFR 701.21
	Investments	12 CFR 703
	Supervisory Committee Audits and Verifications	12 CFR 715
	Security program	12 CFR 748.0
	Guidelines for Safeguarding Member Information; Responding to Unauthorized Access to Member Information and Member Notice	12 CFR 748, Appendix A; 12 CFR 748, Appendix B
	Records Preservation Program and Appendices—Record Retention Guidelines; Catastrophic Act Preparedness Guidelines	12 CFR 749
	Appraisals	12 CFR 722
	Examination	12 CFR 741.1
	Liquidity and contingency funding plans	12 CFR 741.12
	Regulations Codified Elsewhere in NCUA's Regulations as Applying to Federal Credit Unions That Also Apply to Federally Insured State-Chartered Credit Unions	12 CFR 741, Subpart B
	Guidance for an Interest Rate Risk Policy and an Effective Program	12 CFR 741, Appendix A
	Loan Workouts, Nonaccrual Policy, and Regulatory Reporting of Troubled Debt	12 CFR 741, Appendix B

VI. Regulatory Procedures

Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023 (5 U.S.C. 553(b)(4)) (Act) requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website under section 206(d) of the E-Government Act of 2002 (44 U.S.C. 3501) (commonly known as regulations.gov). The Act, under its terms, applies to notices of proposed rulemaking and does not expressly include other types of documents that the Board publishes voluntarily for public comment, such as documents and interim-final rules that request comment despite invoking “good cause” to forgo such notice and public procedure. The Board, however, has elected to address the Act’s requirement in these types of documents in the interests of administrative consistency and transparency.

In summary, as contemplated by the Economic Growth and Regulatory Paperwork Reduction Act of 1996, the NCUA Board is reviewing its regulations to identify rules that are outdated, unnecessary, or unduly burdensome on federally insured credit unions. The NCUA divided its regulations into 10 categories outlined in the included chart. Over the next 2 years, the NCUA will publish four *Federal Register* documents requesting comment on multiple categories. This first *Federal Register* document requests comment on regulations concerning the following two categories: “Applications and Reporting,” and “Powers and Activities.” The NCUA will address the remaining eight categories in the next three documents.

The document and the summary can be found at <https://www.regulations.gov>.

By the National Credit Union Administration Board.

Melane Conyers-Ausbrooks
Secretary of the Board

