

RCDRIA to publish the final rule with an immediate effective date.

F. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act¹⁴ requires the Federal banking agencies to use “plain language” in all proposed and final rules published after January 1, 2000. In light of this requirement, the OCC has sought to present the final rule in a simple and straightforward manner. The OCC invited comment at the interim final rule stage on whether there were additional steps the OCC could take to make the rule easier to understand. No comments were received in response to this request.

G. Unfunded Mandates Act

As a general matter, the Unfunded Mandates Act of 1995 (UMRA), 2 U.S.C. 1531 *et seq.*, requires the preparation of a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published. *See* 2 U.S.C. 1532(a). Therefore, because the OCC found good cause to dispense with notice and comment for this final rule, the OCC concludes that the requirements of UMRA do not apply.

List of Subjects in 12 CFR Part 9

Estates, Investments, National banks, Reporting and recordkeeping requirements, Trusts and trustees.

Authority and Issuance

Accordingly, for the reasons set forth in the preamble, the interim final rule amending 12 CFR part 9 that was published at 85 FR 49229 on August 13, 2020, is adopted as final with the following change:

PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

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

Authority: 12 U.S.C. 24 (Seventh), 92a, and 93a; 15 U.S.C. 78q, 78q–1, and 78w.

- 2. Section 9.18 is amended by revising paragraph (b)(5)(iii)(C)(4) to read as follows:

§ 9.18 Collective investment funds.

* * * * *

(b) * * *

(5) * * *

(iii) * * *

(C) * * *

(4) The bank’s board of directors, or a committee authorized by the board of directors, represents that the bank will act upon any withdrawal request as soon as practicable and consistent with its fiduciary duties; and

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Michael J. Hsu,

Acting Comptroller of the Currency.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 703, 741 and 746

RIN 3133–AF29

Derivatives

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending the NCUA’s Derivatives rule. The Board issued a proposed Derivatives rule at its October 2020 meeting. This final rule will modernize the NCUA’s Derivatives rule and make it more principles-based, while retaining key safety and soundness components. The changes contained herein will provide more flexibility for federal credit unions (FCUs) to manage Interest Rate Risk (IRR) through the use of Derivatives. The Board is finalizing the rule largely as proposed, except for a few changes to various sections based on comments received. Such changes include permitting written options that comply with this final rule and amending the collateral requirements for cleared Derivatives. In addition, the Board is not finalizing a proposed change that would have required all Counterparties to be domiciled in the United States.

DATES: This rule is effective June 25, 2021.

FOR FURTHER INFORMATION CONTACT:

Policy: Tom Fay, Director of Capital Markets, Office of Examination and Insurance or Rick Mayfield, Senior Capital Markets Specialist, Office of Examination and Insurance. **Legal:** Justin M. Anderson, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314–3428. Tom Fay can be reached at (703) 518–1179, Rick Mayfield can be reached at (703) 518–6501, and Justin Anderson can be reached at (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Proposed Rule

At its October 2020 meeting, the Board issued a proposed rule intended to modernize the NCUA’s Derivatives rule at subpart B to 12 CFR part 703 by moving to a principles-based approach.¹ The proposed rule included, among other things, amendments to:

- Streamline the application process and exempt certain FCUs from the requirement to submit an application;
- remove regulatory limits on the amount of Derivatives an FCU can enter into;
- remove permissible Derivatives types in favor of a characteristic-based approach; and
- reorganize rules related to loan pipeline management.

As discussed later in this preamble, the Board is finalizing the rule largely as proposed. However, in response to comments received, the Board is making a few regulatory changes and clarifying several items.

II. Final Rule and Public Comments on the Proposed Rule

The Board received 17 comments from a variety of sources, including: Natural person credit unions, a financial advisor, credit union trade associations and leagues, brokers and introducing agents, and one anonymous source. All of the comments received by the Board supported the proposal and the NCUA’s proposed principles-based approach to Derivatives. Most commenters, however, did request at least one change or clarification. The following is a summary of the requested changes and clarifications, organized by topic, and responses to the same.

A. Requirement To Submit an Application

Eight commenters addressed various aspects of the proposed application and notification structure. For ease of reference, each topic is discussed separately.

1. Asset Threshold

Three commenters disagreed with the proposed \$500 million asset size threshold required to qualify for an exemption from the requirement to submit an application for Derivatives authority. These commenters argued that an asset threshold is an arbitrary number that does not accurately reflect an FCU’s ability to safely engage in Derivatives. One commenter stated that it is possible that FCUs below the NCUA’s proposed threshold may have the requisite infrastructure to safely engage in Derivatives. Two of the

¹⁴ 12 U.S.C. 4809.

¹ 85 FR 68487, 68495 (Oct. 29, 2020).

commenters sought an outright removal of the proposed asset threshold; the third commenter sought removal or a reduction of the amount of the threshold.

The Board is not making any changes to the requirements related to the asset threshold that determines which FCUs must submit an application for Derivatives authority. As stated in the proposal, the asset threshold aligns with the definition of “complex credit union” in the NCUA’s risk-based capital (RBC) rule.² The Board chose an asset threshold of \$500 million for the RBC rule after careful consideration of the activities and volume of activities of credit unions at certain asset thresholds. As such, the Board believes the RBC asset threshold is a valuable demarcation line above which it is reasonable to expect FCUs will have the required infrastructure to safely engage in Derivatives. This is further supported by the Board’s experience in reviewing FCU applications since the inception of the current Derivatives rule. A review of Derivatives applications under the current rule confirms that FCUs greater than \$500 million in assets generally possess the management expertise and required infrastructure to support a Derivatives program.

The Board notes that it did receive a small number of applications, under the current rule, from FCUs with assets under \$500 million. While these FCUs met the requirements of the current rule, the Board believes this small group of FCUs may not be representative of the capabilities of all FCUs under \$500 million in assets. As such, the Board does not believe this small number of FCUs supports lowering the \$500 million threshold. In addition, the Board notes that this final rule does not bar FCUs under the asset threshold from receiving Derivatives authority. As discussed in the next paragraph, such an FCU may receive Derivatives authority after completing an application that demonstrates it can safely manage a Derivatives program.

As commenters stated, it is possible that an FCU under \$500 million may have the requisite infrastructure to safely engage in Derivatives. While the Board agrees with the commenters that an FCU with total assets under \$500 million may have the requisite infrastructure to support Derivatives, those FCUs may not be representative of all FCUs with total assets under \$500 million. However, this final rule provides all FCUs with total assets under \$500 million the ability to use Derivatives by retaining the provisions

of the proposed rule, which require that these FCUs apply for Derivatives authority consistent with § 703.108(b) and demonstrate the requisite infrastructure to safely engage in Derivatives.

2. Change in Condition

One commenter raised a concern and a question with the proposed requirement that an FCU have a Management CAMEL component rating of 1 or 2 to forego submitting an application for Derivatives authority. This commenter’s concern and question focused on a scenario where an FCU receives approval for Derivatives authority, but its management component later falls below the required management rating. Specifically, the commenter stated that it:

... disagrees with the proposal to require that a credit union, previously meeting the requirements to engage in derivatives, cease entering into new derivatives in the event the Management CAMEL component rating is downgraded below 2. The Management CAMEL component rating can be downgraded for reasons not related to the credit union’s management of its derivative program. Prohibiting the use of an effective tool to manage interest rate risk would have a destabilizing impact to the credit union especially when the derivative activity is subject to the existing derivative restrictions ensuring safety and soundness.

Separately, but related, this commenter also questioned how the aforementioned scenario would be applied in the case of an FCU that received approval under the current Derivatives rule and is grandfathered under this final rule (Grandfathered FCU). Specifically, this commenter asked:

Is the NCUA’s intent that said credit unions, if downgraded to a Management CAMEL component rating below 2, are also required to cease further derivative transactions until receiving approval to a newly submitted application? Said credit unions have already taken the step of demonstrating the quality of their derivative programs, and those programs are reviewed on a regular basis by the NCUA.

The Board appreciates these comments and in the following part of this document will clarify several different scenarios related to an FCU failing to comply with the requirements to forgo an initial application. In addition to the ensuing clarifying discussion, the Board, as discussed later in this section, is also making changes to § 703.108(d) of this final rule to ensure the regulatory text is clear and transparent.

As discussed in the preamble to the proposed rule³ and the accompanying rule text, § 703.108(a) states that an FCU is not required to apply for Derivatives authority if it has assets of at least \$500 million and its most recent Management CAMEL component rating is a 1 or 2. The Board believes clarification is warranted on how these requirements relate to § 703.108(d). Specifically, § 703.108(d) requires an FCU to immediately cease entering into any new Derivatives and notify the applicable Regional Director if the FCU experiences a negative change in condition such that it no longer meets the requirements discussed above or, if applicable, renders its approved application inaccurate.

The Board notes that in any instance in which an FCU, not subject to an active application under § 703.108(b), no longer meets the requirements in § 703.108(a), such FCU would need to immediately cease entering into new Derivatives transactions and notify the applicable Regional Director. An FCU required to cease entering into Derivatives may not continue entering into Derivatives transactions until it receives written notification from the applicable Regional Director that it is permitted to do so. For clarification, the cessation and notification discussed in the prior sentences would apply in any of the following circumstances:

1. A Grandfathered FCU’s Management CAMEL component rating drops to a 3, 4, or 5, or is a 3, 4, or 5 as of the effective date of this final rule; and/or the FCU’s assets drop below \$500 million or are below \$500 million as of the effective date of this final rule;

2. An FCU that was not required to submit an application for Derivatives authority under this final rule, and no longer meets either or both of the requirements in § 703.108(a); and

3. An FCU that was required to submit an application under § 701.108(b), but later meets the requirements in § 703.108(a) and then subsequently fails to meet the requirements in § 703.108(a).

Under the first scenario above, a Grandfathered FCU would, under the current Derivatives rule, already be prohibited from entering into new Derivatives transactions if its Management CAMEL component rating is a 3, 4, or 5. Under this final rule, such FCU would be remain prohibited from entering into new Derivatives transactions. Unlike the current rule, however, such FCU would not be automatically barred from continuing to use Derivatives until its management rating met the regulatory standard. Rather, this final rule provides the

² 83 FR 55467 (Nov. 6, 2018).

³ 85 FR 68487, 68495 (Oct. 29, 2020).

Regional Director with discretion to evaluate the reasons for the lower management rating and determine if the FCU can safely continue to use Derivatives. The Board notes that this flexibility will aid FCUs that have a Management CAMEL component rating of 3, 4, or 5 for reasons unrelated to the FCU's ability to safely use Derivatives.

Scenario one, described above, would also apply to any Grandfathered FCU that, as of the effective date of this final rule, has assets below the \$500 million threshold required in § 703.108(a) of this final rule.

Under scenario two above, any FCU that obtains Derivatives authority without applying, because the FCU met the requirement in § 703.108(a), would be required to cease entering into new Derivatives transactions and notify the applicable Regional Director if such FCU ever failed to continue meeting the aforementioned requirements. The required cease and notify procedures would apply to any instance in which the FCU fails to meet the requirements of § 703.108(a), including a situation where the FCU fails to meet one or both requirements, subsequently meets those requirements, and later falls out of compliance again. The Board notes that the cease and notify procedures in § 703.108(d) are not an absolute bar to continuation of Derivatives transactions. Rather, the procedures provide an opportunity for the Regional Director to evaluate the condition of the FCU and determine if it is safe and sound for the FCU to continue using Derivatives. To that end, the Board notes that this final rule provides for more flexibility than the current rule.

Finally, in scenario three the Board seeks to clarify two distinct points:

- First, an FCU that is required to apply for Derivatives authority under this final rule that subsequently meets the requirements of § 703.108(a) will, as of the date of meeting such requirements, no longer be bound by the terms of its application. Instead, such FCU will be subject only to the terms of this final rule and any future amendments made thereto. To ensure the final rule reflects this clarification, as further discussed later in this section, the Board is making minor clarifications in the final rule regulatory text.

- Second, the Board notes that such FCU, discussed in the preceding sentences, that fails to continue to meet the requirements in § 703.108(a) will be required to undertake the same cease and notify procedures as outlined above. Such FCUs will not automatically be required to reapply. However, as for all three scenarios, the Regional Director may exercise any

remedy he or she sees fit for an FCU that is no longer in compliance with § 703.108(a) or its approved and still in force application. Such action could include, but is not limited to, revocation of authority or a required application for continued authority.

To effectuate the clarifications discussed in this section of the preamble, the Board has reorganized and amended the rule text in § 703.108(d). Specifically, the Board has divided this section into two types of changes in condition: (1) A negative change in condition that may require remedial action by the applicable Regional Director; and (2) a positive change in condition such that an FCU that applied for Derivatives authority is no longer subject to such application. The Board believes this reorganization will make this section of the rule clearer and more user friendly without introducing any substantive amendments. In addition, the Board is also clarifying when, after a negative change in condition, an FCU may begin entering into Derivatives transactions again. Specifically, as discussed earlier in this section of the preamble, this change will clarify that an FCU may not continue entering into Derivatives transactions until notified in writing by the applicable Regional Director. In the proposed rule, the Board stated that an FCU subject to these cease and notify procedures could choose to apply for Derivatives authority under 703.108(b). While the Board was clear that applying was something an FCU *could* do, the Board intended this to be but one option for the continued use of Derivatives. The Board's intention in the proposed rule was that if an FCU chose not to apply for Derivatives authority, after being subject to the cease and notify procedures, such FCU would not be permitted to resume using Derivatives until notified by its Regional Director. This is further supported by the notion that the cease and notify procedures also apply to an FCU that is in violation of its approved application, and the fact that the proposed rule provided the Regional Director with remedial actions. As such, it was always the Board's intention that there would be notification back to an FCU subject to the cease and notify procedures. The Board, however, believes it could have been clearer with respect to this notification from the Regional Director. As such, the Board is taking this opportunity to be more clear and fully transparent. Such change is not intended to be substantive in any way.

3. Timing of Approval

One commenter requested a time limit for approval if an FCU is required to submit an application. This commenter stated that:

A regulation with no time bar and an open-ended invitation to request additional information could needlessly slow credit unions seeking to gain access to derivatives responsibly and as part of a risk reducing strategy. In our experience, such a review without a time limit can be frustrating to a credit union's proper planning.

The Board is retaining the provisions of the proposed rule without any time limit in approving an FCU's Derivatives application. The Board notes that the current rule does not include any time limit for the NCUA's approval. The Board believes that NCUA staff should have adequate time to review an FCU's Derivatives application to ensure the FCU has the requisite infrastructure and can safely manage a Derivatives program. The Board's experience with the current rule is that the timing of approvals for FCU applications was on average less than 100 days from the receipt of the application and believes that, given the changes to the asset threshold for notifications and the expected modifications to improve the application requirements, the timing of approval would be similar, if not shorter.

4. Timing of Notification

Finally, two commenters addressed the proposed requirement for a credit union to submit notification to the NCUA within five business days of entering into its first Derivatives transaction. One commenter requested an extension of the time-period to submit notification from 5 days to 7–10 days. This commenter stated that a longer notification period would provide flexibility for uncontrollable and unforeseen operational or marketplace delays. The other commenter requested that the NCUA not apply the notification requirement to federally insured, state-chartered credit unions (FISCUs) that are chartered in states that require preapproval by, or notification to, the state regulator. This commenter stated that requiring notification to the NCUA for these FISCUs would create an inefficient redundancy. To further streamline the application process, this commenter requested an exemption from the notification requirement for the aforementioned FISCUs.

The Board believes that replacing the application requirements for a qualified FCU with a required notification within five days after entering into its first

Derivative transaction is a reasonable compromise. Derivatives can be complex and risky transactions, and a prompt notification will allow the applicable Regional Director to efficiently manage examination resources.

The Board also believes that the current burden to a FISCO is unchanged as the FISCO is only notifying the applicable Regional Director after entering into its first Derivative transaction compared to the current requirement of notifying the Regional Director at least 30 days before it begins engaging in Derivatives.

The Board therefore is retaining the provisions of the proposed rule for the timing of notification to five days after entering into its first Derivative transaction.

B. Collateral Requirements

Three commenters addressed the proposed collateral requirements for cleared Derivatives. All three commenters disagreed with the NCUA specifying acceptable collateral for cleared Derivatives. One commenter stated that the current Derivatives rule does not have collateral requirements; rather, the current rule relies on the FCU to have systems in place to effectively manage collateral. Further, this commenter stated that for cleared Derivatives, having collateral requirements would create a parallel structure with the collateral requirements of the clearinghouse. This commenter argued that this parallel structure may lead to confusion and/or unnecessary reviews to ensure the FCU's transaction is compliant with both the clearinghouse's requirements and the NCUA's regulation. The other two commenters that addressed this topic echoed the previous statements regarding the inefficiency and unintended consequences that may occur if the NCUA mandates specific collateral, particularly for cleared Derivatives.

In the proposal, the Board noted the rule could be simplified by creating one collateral requirement for both cleared and Non-cleared Derivatives. The Board asked if this approach could cause unintended consequences. Commenters indicated that one collateral standard for cleared Derivatives and Non-cleared Derivatives could create problems for FCUs using cleared Derivatives. Based on comments and further analysis, the Board will not implement collateral requirements for cleared Derivatives. Rather, the final rule only requires specific collateral types for Non-cleared Derivatives, otherwise collateral requirements for cleared derivatives are

subject to the clearinghouse requirements. The Board notes that the collateral requirements for Non-cleared Derivatives are the same requirements included in the proposed rule. As such, the Board is only changing which transactions are subject to those requirements.

The Board believes that the distinction between cleared versus Non-cleared for collateral requirements is consistent with safety and soundness and will prevent any inefficiencies and unintended consequences that could be caused by mandating specific collateral requirements for cleared Derivatives.

C. Counterparties

Two commenters addressed the requirement that all Counterparties be domestic entities (domiciled in the United States). One commenter disagreed with the NCUA limiting permissible Counterparties to those that are domestic. This commenter stated that there is no comparable limitation by the Commodity Futures Trading Commission (CFTC). The commenter went on to point out that "there are dozens of authorized swap dealers that are not U.S. domiciled." This commenter agreed that all FCU Derivatives transactions should be subject to U.S. law, but argued that this can be accomplished through the legal terms of the Derivatives agreement, requiring the transaction be tied to Domestic Interest Rates, denominated in dollars, and subject to U.S. regulation and law. The second commenter stated that the term "domiciled" could lead to confusion, as there are multiple interpretations of this term. This commenter stated that, alternatively, the NCUA "should consider expanding the definition to include 'U.S. Branch Offices of foreign-based Swap Dealers' or 'any U.S. registered Swap Dealer,' or explicitly addressing the prohibition to transactions with these entities in the final rule's commentary."

After consideration of the comments, the Board is declining to finalize the proposed change that would require all Counterparties to be domiciled in the United States. As such, the current Counterparty requirements will be effective for the final rule. In this final rule, the Board has included the current Counterparty requirements and associated definitions. The current rule allows for Swap Dealers, Introducing Brokers, and/or Futures Commission Merchants that are current registrants of the CFTC to be Counterparties for exchange-traded and cleared Derivatives. For Non-cleared Derivatives, the current rule allows for

registered CFTC Swap Dealers to be the Counterparty.

As part of retaining the current rule's Counterparty requirement for cleared/exchange-traded and Non-cleared Derivatives, the Board will retain the following definitions from the current rule:

- Counterparty;
- Derivatives Clearing Organization;
- Futures Commission Merchant;
- Introducing Broker;
- Non-cleared; and,
- Swap Dealer.

In retaining the Counterparty requirements of the current rule, the Board is deleting the definition of Domestic Counterparty as proposed.

D. Liquidity Review

Three commenters requested clarification on the liquidity review required in the proposed rule. These commenters suggested that the NCUA should allow the aforementioned review to be part of the FCU's overall liquidity review, rather than requiring a separate liquidity review for an individual product type. While the Board is not making any rule text changes related to an FCU's liquidity review, the Board does believe it is necessary to clarify its expectations related to the same. The requirement to conduct a liquidity review as part of the operational support requirements in § 703.106(b)(5) is not intended to require a separate liquidity analysis for Derivatives. Rather, it is permissible for Derivatives be part of the more comprehensive liquidity risk management processes required in part 741 of the NCUA's regulations.⁴

E. Maturity

Three commenters requested that the NCUA remove the 15-year maturity limit on Derivatives. Commenters stated that removing this limit would provide additional flexibility and not subject FCUs to a one-sized fits all approach.

For the reasons stated in the proposal,⁵ the Board continues to believe that the 15-year maturity limit allows FCUs to effectively hedge various points of the yield curve for longer-term assets like mortgages, while preventing an excessive exposure to very long Derivative maturities. As such, the Board is not making any amendments to this section of the rule.

F. Written Options

While the proposed rule moved toward a principles-based approach, the Board explicitly proposed to prohibit an FCU from using written options. This

⁴ 12 CFR part 741.

⁵ 85 FR 68487, 68491 (Oct. 29, 2020).

prohibition is included in the current rule, where FCUs are only permitted to purchase Derivatives. In continuing this prohibition, the Board was concerned with the asymmetric return profile of written options and was also not aware of any safe uses of written options for managing IRR. To garner more information on the use and risk of written options, the proposed rule included a specific request for comments on the possibility of the Board permitting written options in a final Derivatives rule. Specifically, the Board asked for comments on whether FCUs should be able to engage in written options to manage IRR, and specific scenarios where a written option could be used to manage IRR.⁶ In response, five commenters stated that the Board should not prohibit an FCU from engaging in written options. Of these commenters, one requested clarification on the NCUA's definition of a written option, and two others provided detailed examples of transactions where a written option could be both beneficial and safe and sound.

After consideration of the comments and further analysis, the Board is removing the proposed prohibition on written options. As such, this final rule permits an FCU to enter into written options, but only if such options are used to manage IRR. As a result of removing the prohibition on written options and for increased clarity in the rule text, the Board is adding a new § 703.103(a)(1) restating a mandatory characteristic in that Derivatives can only be used for the purpose of managing IRR. The Board is adding this characteristic to reinforce the principle that all Derivatives, including written options, must only be used for the management of IRR.

As part of the Board's analysis in considering written options as a permissible Derivative for FCUs, the Board reviewed the risk profile and potential uses of written options. An option contract entitles the option purchaser the right, but not the obligation, to buy, sell, or enter into a commitment with a Counterparty including specific terms on interest rates or prices at a specified date, depending on the form of the option. The option purchaser will pay a premium upfront for this right. The seller or writer of an option, when not offsetting an existing purchased option, is the originator of an option contract exposure who, in exchange for receiving the premium, is subject to the right

afforded to the purchaser in exercising the terms of the contract.

The risk profile of an interest rate option, whether purchased or written, is asymmetric. This means the payment(s) on the option can exceed the premium paid or received for the option. With a written option, the seller of the written option would receive a premium and would generally be obligated to make payments to the purchaser if conditions are met. For example, the seller of a written interest rate cap would be required to make payments to the purchaser if the reference rate is greater than the rate on the interest rate cap contract. With interest rate options, this payment generally behaves similar to the required payments on other interest rate Derivatives. For example, the cashflow payment profile of a sold interest rate cap can be compared to a receive-fixed, pay-floating interest rate swap with the same notional and strike/swap rate, which is permissible transaction types for FCUs. One commenter pointed out that a sold interest rate cap, combined with a purchased interest rate floor, would behave almost identical to an interest rate swap with the same strike/swap rates and the same maturities. By permitting written options for managing IRR, FCUs could enter into an exposure similar to a receive-fixed, pay-floating swap transaction more customized to the FCUs balance sheet needs.

The Board notes that written options can also be used to reduce the costs associated with managing IRR. Such cost reduction can be achieved by, among other things, offsetting the purchase of another Derivative or reducing its exposure to such Derivative.

In summary, the Board has determined that the use of written options provides additional flexibility for FCUs for the purpose of managing IRR. However, the Board would like to emphasize that any written option by an FCU would need to be for the purpose of managing IRR. The FCU must be able to demonstrate how the written option, on its own or combined with other Derivatives, is being used to manage interest rate risk.

Related to the removal of the prohibition of written options, the Board is removing the definitions of Interest rate cap, Interest rate floor and Written options from the final rule. The Board notes the specific product definitions for options are not needed given the prohibition on written options has been removed from the final rule.

G. Pipeline Management

The Board proposed to streamline sections of current part 703 on when an FCU may enter into transactions to manage interest rate exposure in its loan pipeline. The proposed rule removed the reference to specific product types for loan pipeline management and expanded pipeline management to all loans. Both of these changes are consistent with the principals-based approach the Board implemented in this rule. In making this change in the proposal, the Board asked if loan pipeline management should be limited to mortgage loans. The Board asked this to allow stakeholders the opportunity to provide input on this expansion of the loan pipeline authority. Both commenters on this question stated NCUA should not restrict pipeline management to only mortgage loans. These commenters stated that pipeline management has value for managing IRR for all types of loans, not just mortgages.

The Board agrees and is retaining this portion of the rule as proposed.

H. Regional Director Authority

Three commenters addressed the ability of a Regional Director to prohibit an FCU from continuing to enter into Derivatives transactions. All three commenters found the proposed authority to be overly broad. One commenter noted that under the proposed rule, a Regional Director could, for any reason, prohibit an FCU from continuing to use Derivatives. This commenter requested that a Regional Director's authority to prohibit the use of Derivatives be directly related to Derivatives activity. Further, one commenter requested that any prohibition on the continued use of Derivatives be accompanied by a written statement to that effect and the ability to appeal such decision, under part 746 of the NCUA's regulations.⁷

The Board believes the level of Regional Director authority is appropriate. The Board notes, given the complexity of Derivatives, it is necessary to provide the Regional Director with broad discretion to allow him or her to evaluate an FCU and, if necessary, take remedial actions to address unsafe or unsound conditions that are caused by, related to, or could be exacerbated by the continued use of Derivatives.

The Board notes that such discretion will make this final rule more flexible than the current Derivatives rule. As discussed previously in this document, under the current rule, if an FCU falls

⁶ *Id.* at 68492.

⁷ 12 CFR part 746.

out of compliance with the rule or its approved application, then the FCU must cease all Derivatives activity until it comes back into compliance. In some instances, an FCU may fall out of compliance with the current rule for reasons completely unrelated to its Derivatives activity; for example, an FCU that has its management rating lowered to a 3 for reasons unrelated to its ability to manage Derivatives. In this example, under the current rule, this FCU would be required to achieve a management rating of at least 2 before it could begin entering into Derivatives again. Conversely, under this final rule, the Regional Director could evaluate the FCU's change in condition, and might allow it to continue utilizing Derivatives if he or she determines that the change in condition has not impacted the FCU's ability to manage its Derivatives program. As such, the Board is not making any changes in response to these comments.

I. Monthly Reporting

Three commenters addressed the requirement that an FCU engaging in Derivatives submit monthly reports to the FCU's senior management and, if applicable, asset liability committee. One commenter requested clarification on the level of specificity in the required reporting. Two other commenters recommended that the NCUA explore the sufficiency of less frequent reporting.

As stated in the preamble to the proposed rule,⁸ the Board believes that retaining these reporting requirements is essential to FCUs maintaining strong internal controls related to Derivatives, given the principles-based approach of this proposed rule. The Board also believes that the proposed reporting requirements are less burdensome to FCUs, because they are less prescriptive, while ensuring the proper FCU officials receive reports that are necessary to oversee an FCU's Derivatives program. Therefore, the Board is retaining the reporting requirements included in the proposed rule.

J. Derivative Transactions With Commercial Borrowers

Two commenters encouraged the Board to permit FCUs to enter into interest rate swaps with commercial borrowers. These commenters stated that these transactions would help both the FCU and commercial borrowers while addressing the Federal Credit Union Act's (FCU Act) prohibition on prepayment penalties. The Board is

declining to permit this type of transaction for two reasons.

First, the Board believes it is highly unlikely that a commercial borrower an FCU does business with will be regulated by the CFTC consistent with the Counterparty requirement in § 703.104(b) of this final rule. The Board intentionally included the Counterparty requirement in § 703.104(b) of the rule to ensure all Derivative counterparties are CFTC-regulated. The Board believes allowing non-CFTC regulated counterparties would increase the risk of Derivatives and potentially create safety and soundness issues for the FCU.

Second, the Board believes that allowing FCUs to enter into an interest rate swap with commercial borrowers would equate to a circumvention of the FCU Act. The FCU Act prohibits prepayment penalties,⁹ and allowing an FCU to enter into interest rate swap may require the commercial borrower to make a payment on the interest rate swap if they prepay the commercial loan. This payment on the interest rate swap would behave similar, if not identical, to a prepayment penalty. As such, the Board is retaining the prohibition on these types of transactions.

K. USD LIBOR

The Board is retaining the proposed provisions of § 703.103 for requirements related to the characteristics of permissible IRR Derivatives, including the provision that a Derivative contract must be based on Domestic Interest Rates or the USD London Interbank Offered Rate (LIBOR). The Board acknowledges the March 5, 2021, announcement by the Intercontinental Exchange Benchmark Administration, which publishes the USD LIBOR rate settings, that it will cease the publication of all USD LIBOR rate settings by June 30, 2023. Accordingly, the Board will consider revisions to this subpart after the cessation of the USD LIBOR.

III. Regulatory Procedures

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a valid OMB control number. In accordance

with the PRA, the information collection requirements included in this final rule have been submitted to OMB for approval under control number 3133-0133.

B. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The 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 final rule does not have substantial direct effects 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. The NCUA has, therefore, determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

C. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule will not affect family well-being within the meaning of § 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105-277, 112 Stat. 2681 (1998).

D. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) (SBREFA) generally provides for congressional review of agency rules. A reporting requirement is triggered in instances where the NCUA issues a final rule as defined by § 551 of the Administrative Procedure Act. An agency rule, in addition to being subject to congressional oversight, may also be subject to a delayed effective date if the rule is a "major rule." The NCUA does not believe this rule is a "major rule" within the meaning of the relevant sections of SBREFA. As required by SBREFA, the NCUA submitted this final rule to the Office of Management and Budget for it to determine if the final rule is a "major rule" for purposes of SBREFA. The Office of Management and Budget determined the final rule was not a major rule. The NCUA also will file all appropriate reports.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory

⁸ 85 FR 68487, 68490 (Oct. 29, 2020).

⁹ 12 U.S.C. 1757(5)(A)(viii).

flexibility analysis that describes the impact of a proposed rule on small entities (defined for purposes of the RFA to include credit unions with assets less than \$100 million).¹⁰ A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule.

The NCUA certified that the proposed rule would not have a significant economic impact on a substantial number of small credit unions. The Board did not receive any comments on this section.

List of Subjects

12 CFR Part 701

Advertising, Aged, Civil rights, Credit, Credit unions, Fair housing, Individuals with disabilities, Insurance, Marital status discrimination, Mortgages, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination, Signs and symbols, Surety bonds.

12 CFR Part 703

Credit unions, Investments, Reporting and recordkeeping requirements.

12 CFR Part 741

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 746

Administrative practice and procedure, Claims, Credit unions, Investigations.

By the NCUA Board on May 20, 2021.

Melane Conyers-Ausbrooks,
Secretary of the Board.

For the reasons discussed in the preamble, the Board is amending 12 CFR parts 701, 703, 741, and 746 as follows:

PART 701—ORGANIZATION AND OPERATION 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. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610.

Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

§ 701.21 [Amended]

- 2. Amend § 701.21 by removing paragraph (i).

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

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

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

§ 703.2 [Amended]

- 4. Amend § 703.2 by removing the definition of “Derivative”.
■ 5. Amend § 703.14 by revising paragraph (k) and adding paragraph (l) to read as follows:

§ 703.14 Permissible investments.

* * * * *

(k) *Loan pipeline management.* A Federal credit union may enter into the following transactions related to the management of its loan pipeline:

- (1) Interest rate lock commitments and forward sales commitments; and
(2) Transactions to manage Interest Rate Risk, as defined in subpart B of this part.

(l) *Embedded options.* A Federal credit union may enter into embedded options not required under generally accepted accounting principles adopted in the United States (GAAP) to be accounted for separately from the host contract. Embedded options that are required, under GAAP, to be accounted for separately from the host contract, are addressed in § 703.103(b) of this part.

- 6. Revise subpart B to read as follows:

Subpart B—Derivatives

Sec.

- 703.101 Purpose and scope.
703.102 Definitions.
703.103 Requirements related to the characteristics of permissible Interest Rate Risk Derivatives.
703.104 Requirements for Counterparty agreements, collateral and Margining.
703.105 Reporting requirements.
703.106 Operational support requirements.
703.107 External service providers.
703.108 Notification and application requirements.
703.109 Regulatory violation or unsafe and unsound condition.

Subpart B—Derivatives.

§ 703.101 Purpose and scope.

(a) *Purpose.* This subpart grants Federal credit unions limited authority to enter into Derivatives only for the purpose of managing Interest Rate Risk.

(b) *Scope.* This subpart applies to all Federal credit unions. Except as

provided in § 741.219, this rule does not apply to federally insured, state-chartered credit unions.

(c) *Prior approvals.* Any Federal credit union with an active approval, under the prior version of this subpart, on June 25, 2021 is subject to the provisions of this subpart and is no longer subject to the restrictions, limits, or terms contained in the Federal credit union's approved application.

(d) *Pending Approvals.* Any application for Derivatives authority pending on June 25, 2021, except for such applications submitted by a Federal credit union that would be subject to the requirements of § 703.108(b), is deemed to be withdrawn and such applicant is subject to the provisions of this subpart.

§ 703.102 Definitions.

For purposes of this subpart:

Counterparty means a Swap Dealer, Derivatives Clearing Organization, or exchange that participates as the other party in a derivatives transaction with a Federal credit union.

Derivative means a financial contract that derives its value from the value and performance of some other underlying financial instrument or variable, such as an index or interest rate.

Derivatives Clearing Organization has the meaning as defined by the Commodity Futures Trading Commission (CFTC) in 17 CFR 1.3.

Domestic interest rates means interest rates derived in the United States and are U.S. dollar-denominated.

Earnings at Risk means the changes to earnings, typically in the short term (for example, 12 to 36 months), caused by changes in interest rates.

Economic Effectiveness means the extent to which a Derivatives transaction results in offsetting changes in the Interest Rate Risk that the transaction was, and is, intended to provide.

External Service Provider means any entity that provides services to assist a Federal credit union in carrying out its Derivatives program and the requirements of this subpart.

Futures Commission Merchant (FCM) has the meaning as defined by the CFTC in 17 CFR 1.3.

Interest Rate Risk means the current and prospective risk to a credit union's capital and earnings arising from movements in interest rates.

Introducing Broker means a futures brokerage firm that deals directly with the client, while the trade execution is done by an FCM.

Margin means the minimum amount of eligible collateral, as defined in § 703.104(c), that must be deposited

¹⁰ See NCUA Interpretive Ruling and Policy Statement 87–2, as amended by IRPS 03–2 and IRPS 15–1, 80 FR 57512 (Sept. 24, 2015).

between parties to a Derivatives transaction, as detailed in a Master Services Agreement.

Master Services Agreement means a document agreed upon between two parties that sets out standard terms that apply to all transactions entered into between those parties. The most common form of a Master Services Agreement for Derivatives is an International Swap Dealer Association Master Agreement.

Net Economic Value means the measurement of changes in the economic value of Net Worth caused by changes in interest rates.

Net Worth has the meaning specified in part 702 of this chapter.

Non-cleared means transactions that do not go through a Derivatives Clearing Organization

Regional Director means an NCUA Regional Director or the Director of the Office of National Examinations and Supervision.

Senior Executive Officer has the meaning specified in § 701.14 of this chapter and includes any other similar employee that is directly within the chain of command for the oversight of a Federal credit union's Derivatives program.

Structured Liability Offering means a share product created by a Federal credit union with contractual option features, such as periodic caps and calls, similar to those found in structured securities or structured notes.

Swap Dealer has the meaning as defined by the CFTC in 17 CFR 1.3.

Threshold Amount means an unsecured credit exposure that a party to a Derivatives transaction is prepared to accept before requesting additional eligible collateral, as defined in § 703.104(c), from the other party.

Trade Date means the date that a Derivatives order (new transactions, terminations, or assignments) is executed with a Counterparty.

§ 703.103 Requirements related to the characteristics of permissible Interest Rate Risk Derivatives.

(a) Under this subpart, a Federal credit union may only enter into Derivatives that have the following characteristics:

- (1) Are for the purpose of managing Interest Rate Risk;
- (2) Denominated in U.S. dollars;
- (3) Based on Domestic Interest Rates or the U.S. dollar-denominated London Interbank Offered Rate (LIBOR);
- (4) A contract maturity equal to or less than 15 years, as of the Trade Date; and
- (5) Not used to create Structured Liability Offerings for members or nonmembers.

(b) A Federal credit union may not engage in embedded options required under U.S. Generally Accepted Accounting Principles (GAAP) to be accounted for separately from the host contract.

§ 703.104 Requirements for Counterparty agreements, collateral and Margining.

To enter into Derivative transactions under this subpart, a Federal credit union must:

(a) Have an executed Master Services Agreement with a Counterparty. Such agreement must be reviewed by counsel with expertise in similar types of transactions to ensure the agreement reasonably protects the interests of the Federal credit union;

(b) Use only the following Counterparties:

(1) For exchange-traded and cleared Derivatives: Swap Dealers, Introducing Brokers, and/or FCMs that are current registrants of the CFTC; or

(2) For Non-cleared Derivative transactions: Swap Dealers that are current registrants of the CFTC.

(c) Utilize contracted Margin requirements with a maximum Margin threshold amount of \$250,000; and

(d) For Non-cleared Derivative transactions, accept as eligible collateral, for Margin requirements, only the following: Cash (U.S. dollars), U.S. Treasuries, government-sponsored enterprise debt, U.S. government agency debt, government-sponsored enterprise residential mortgage-backed security pass-through securities, and U.S. government agency residential mortgage-backed security pass-through securities.

§ 703.105 Reporting requirements.

(a) *Board reporting.* At least quarterly, a Federal credit union's Senior Executive Officers must deliver a comprehensive Derivatives report, as described in paragraph (c) of this section to the Federal credit union's board of directors.

(b) *Senior Executive Officer and asset liability or similarly functioning committee.* At least monthly, Federal credit union staff must deliver a comprehensive Derivatives report, as described in paragraph (c) of this section to the Federal credit union's Senior Executive Officers and, if applicable, the Federal credit union's asset liability or similarly functioning committee.

(c) *Comprehensive Derivatives management report.* At a minimum, the reports required in paragraphs (a) and (b) of this section must include:

- (1) Identification of any areas of noncompliance with any provision of

this subpart or the Federal credit union's policies, and the planned remediation of such noncompliance;

(2) An itemization of the Federal credit union's individual transactions subject to this subpart, the current values of such transactions, and each individual transaction's intended use for Interest Rate Risk mitigation; and

(3) A comprehensive view of the Federal credit union's risk reports, including, but not limited to, Interest Rate Risk calculations with details of the transactions subject to this subpart.

(d) *Retention requirement.* Reports required by this section must, at a minimum, be retained in accordance with the requirements in Appendix A to part 749.

(e) *Notification of noncompliance.* Notification of any noncompliance as part of the Derivatives management report required in paragraph (c)(1) of this section must be submitted to the applicable Regional Director immediately after it has been submitted to the Federal credit union's board of directors.

(f) *NCUA request.* The NCUA may, at any time, request the Derivatives management report required by paragraph (c) of this section.

§ 703.106 Operational support requirements.

(a) *Required experience and competencies.* A Federal credit union using Derivative transactions subject to this subpart must internally possess the following experience and competencies:

(1) *Board.* (i) Before entering into the initial Derivatives transaction, a Federal credit union's board members must receive training that provides a general understanding of Derivative transactions, and the knowledge required to provide strategic oversight of the Federal credit union's Derivatives program.

(ii) Any person that becomes a board member after the initial Derivatives transaction must receive the same training, updated if necessary, as required by paragraph (a)(1)(i) of this section.

(iii) At least annually after the initial Derivatives transaction, as part of the Derivatives reporting requirement in § 703.105(a), the Federal credit union's Senior Executive Officers must brief the board members on the Federal credit union's use of Derivatives to manage Interest Rate Risk.

(2) *Senior Executive Officers.* A Federal credit union's Senior Executive Officers must be able to understand, approve, and provide oversight for the Derivatives program. These individuals must have a comprehensive

understanding of how the Derivative transactions fit into the Federal credit union's Interest Rate Risk management process.

(3) *Qualified Derivatives personnel.*

To engage in the Derivative transactions, a Federal credit union must employ staff with experience in the following areas:

(i) *Asset/liability risk management.*

Staff must be qualified to understand and oversee asset/liability risk management, including the appropriate role of the transactions subject to this subpart. Staff must also be qualified to understand and undertake or oversee the appropriate modeling and analytics related to Net Economic Value and Earnings at Risk;

(ii) *Accounting and financial reporting.* Staff must be qualified to understand and oversee appropriate accounting and financial reporting for Derivatives in accordance GAAP;

(iii) *Derivatives execution and oversight.* Staff must be qualified to undertake or oversee Derivative trade executions; and

(iv) *Counterparty, collateral, and Margin management.* Staff must be qualified to evaluate Counterparty, collateral, and Margin risk as described in § 703.104 of this subpart.

(b) *Required review and internal controls structure.* To effectively manage the transactions subject to this subpart, a Federal credit union must assess the effectiveness of its management and internal controls structure. At a minimum, the internal controls structure must include:

(1) *Transaction review.* Before executing any Derivatives transaction, a Federal credit union must identify and document the circumstances that lead to the decision to execute the Derivatives transaction, specify the strategy the Federal credit union will employ, and demonstrate the economic effectiveness of the transaction;

(2) *Internal controls review.* Within the first year after commencing its first Derivatives transaction, a Federal credit union must have an internal controls review that is focused on the integration and introduction of the program, and ensure the timely identification of weaknesses in internal controls, accounting, and all operational and oversight processes. This review must be performed by an independent external unit or, if applicable, the Federal credit union's internal auditor;

(3) *Financial statement audit.* Any Federal credit union engaging in Derivative transactions pursuant to this subpart must obtain an annual financial statement audit, as defined in § 715.2(d) of this chapter, and be compliant with

GAAP for all Derivatives-related accounting and reporting;

(4) *Collateral management review.*

Before executing its first Derivative transaction, a Federal credit union must establish a collateral management process that monitors the Federal credit union's collateral and Margining requirements and ensures that its transactions are collateralized in accordance with the collateral requirements of this subpart and the Federal credit union's Master Services Agreement with its Counterparty;

(5) *Liquidity review.* Before executing its first Derivative transaction, a Federal credit union must establish a liquidity review process to analyze and measure potential liquidity needs related to its Derivatives program and the additional collateral requirements due to changes in interest rates. The Federal credit union must, as part of its liquidity risk management, calculate and track contingent liquidity needs in the event a transaction needs to be novated or terminated, and must establish effective controls for liquidity exposures arising from both market or product liquidity and instrument cash flows; and

(6) *Separation of duties.* A Federal credit union's process, whether conducted internally or by an External Service Provider, must have appropriate separation of duties for the following functions defined in subsection (a)(3) of this section:

(i) Asset/liability risk management;

(ii) Accounting and financial reporting;

(iii) Derivatives execution and oversight; and

(iv) Counterparty, collateral and Margin management.

(c) *Policies and procedures.* A Federal credit union using Derivatives, permitted under this subpart, must operate according to comprehensive written policies and procedures for control, measurement, and management of Derivative transactions. At a minimum, the policies and procedures must address the requirements of this subpart and any additional limitations imposed by the Federal credit union's board of directors. A Federal credit union's board of directors must review the policies and procedures described in this section at least annually and update them when necessary.

§ 703.107 External service providers.

(a) *General.* A Federal credit union using Derivatives may use External Service Providers to support or conduct aspects of its Derivative management program, provided:

(1) The External Service Provider, including affiliates, does not:

(i) Act as a Counterparty to any Derivative transactions that involve the Federal credit union;

(ii) Act as a principal or agent in any Derivative transactions that involve the Federal credit union; or

(iii) Have discretionary authority to execute any of the Federal credit union's Derivative transactions.

(2) The Federal credit union has the internal capacity, experience, and skills to oversee and manage any External Service Providers it uses; and

(3) The Federal credit union documents the specific uses of External Service Providers in its policies and procedures, as described in § 703.106(c) of this subpart.

(b) *Relation to § 703.106.* This section does not alleviate the responsibility of the Federal credit union to employ qualified staff in accordance with § 703.106 of this subpart.

§ 703.108 Notification and application requirements.

(a) *Notification.* A Federal credit union that meets the following requirements must notify the applicable Regional Director in writing or via electronic mail within five business days after entering into its first Derivatives transaction:

(1) The Federal credit union's most recent NCUA Management CAMEL component is a rating of 1 or 2; and

(2) The Federal credit union has assets of at least \$500 million as of its most recent call report.

(b) *Application.* A Federal credit union that does not meet the requirements of paragraphs (a)(1) and/or (2) of this section must obtain approval before engaging in Derivatives under this subpart from its applicable Regional Director, by submitting an application, that, at a minimum, includes the following:

(1) An Interest Rate Risk mitigation plan that shows how Derivatives are one aspect of the Federal credit union's overall Interest Rate Risk mitigation strategy, and an analysis showing how the Federal credit union will use Derivatives in conjunction with other on-balance sheet instruments and strategies to effectively manage its Interest Rate Risk;

(2) A list of the Derivatives products and characteristics of such products the Federal credit union is planning to use;

(3) Draft policies and procedures that the Federal credit union has prepared in accordance with § 703.106;

(4) A description of how the Federal credit union plans to acquire, employ, and/or create the resources, policies, processes, systems, internal controls, modeling, experience, and

competencies to meet the requirements of this subpart. This includes a description of how the Federal credit union will ensure that Senior Executive Officers, the board of directors, and personnel have the knowledge and experience in accordance with the requirements of this subpart;

(5) A description of how the Federal credit union intends to use External Service Providers as part of its Derivatives program, and a list of the name(s) of and service(s) provided by the External Service Providers, as described in § 703.107 of this subpart, it intends to use;

(6) A description of how the Federal credit union will support the operations of Margining and collateral, as described in § 703.104 of this subpart;

(7) A description of how the Federal credit union will comply with the accounting and financial reporting in GAAP; and

(8) Any additional information requested by the Regional Director.

(c) *Application review.* (1) After the applicable Regional Director has completed his or her review, including any requests for additional information, the Regional Director will notify the Federal credit union in writing of his or her decision. Any denials will include the reason(s) for such denial. A Federal credit union subject to paragraph (b) of this section may not enter into any Derivative transactions under this subpart until it receives approval from the applicable Regional Director. At a Regional Director's discretion, a Federal credit union may reapply if its initial application is denied.

(2) A Federal credit union that receives a denial of its application may appeal such decision in accordance with part 746 of this chapter.

(d) *Change in condition.*—(1) *Negative change in condition.* A Federal credit union that at any time, experiences a change in negative condition such that it no longer meets the requirements of paragraph (a) of this section or renders its approved application inaccurate must immediately:

(i) Cease entering into any new Derivatives; and

(ii) Notify the applicable Regional Director.

(2) *Remedial action for a Federal credit union that experiences a negative change in condition.* The applicable Regional Director may take all necessary actions, including, but not limited to, revoking a Federal credit union's authority to engage in Derivatives and/or requiring divestiture of current Derivatives. A Federal credit union subject to this paragraph may not enter into new Derivatives unless notified in

writing by the applicable Regional Director of its authority to do so.

(3) *Positive change in condition for a Federal credit union subject to paragraph (b) of this section.* A Federal credit union that is required to submit an application under paragraph (b) of this section that, at any time after approval of such application, meets the requirements of paragraph (a) of this section shall no longer be subject to the requirements included in its approved application, but will continue to be subject to the requirements of this subpart.

§ 703.109 Regulatory violation or unsafe and unsound condition.

(a) Upon determination by the applicable Regional Director, and written notice by the same, a Federal credit union that no longer meets the requirements of this subpart; if applicable, fails to comply with its approved application; or is operating in an unsafe or unsound condition must immediately stop entering into any new Derivative transactions until the Federal credit union is notified by the applicable Regional Director in writing that it is permitted to resume engaging in Derivative transactions under this subpart.

(b) If the applicable Regional Director determines a Federal credit union must take any action under paragraph (a) of this section, he or she will provide the Federal credit union with written notice including the reason(s) for such determination and the remedial actions that are required.

(c) During this period, however, the Federal credit union may terminate existing Derivative transactions. A Regional Director may permit a Federal credit union to enter into offsetting transactions if he or she determines such transactions are part of a corrective action strategy; and

(d) A Federal credit union that receives written notice under this section may appeal such determination in accordance with part 746 of the NCUA's regulations.

PART 741—REQUIREMENTS FOR INSURANCE

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

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

■ 8. Amend § 741.219 by revising paragraph (b) to read as follows:

§ 741.219 Investment requirements.

* * * * *

(b) Any credit union that is insured pursuant to title II of the Act must notify

the applicable NCUA Regional Director in writing within five business days after entering into its first Derivatives transaction. Such transactions do not include those included in § 703.14 of this chapter.

PART 746—APPEALS PROCEDURES

■ 9. The authority citation for part 746 continues to read as follows:

Authority: 12 U.S.C. 1766, 1787, and 1789.

■ 10. Amend § 746.201 by revising paragraph (c) to read as follows:

§ 746.201 Authority, purpose, and scope.

* * * * *

(c) *Scope.* This subpart covers the appeal of initial agency determinations by a program office which the petitioner has a right to appeal to the NCUA Board under the following regulations: §§ 701.14(e), 701.21(h)(3), 701.22(c), 701.23(h)(3), 701.32(b)(5), and 701.34(a)(4), appendix A to part 701 of this chapter, appendix B to part 701 of this chapter, Chapters 1–4, §§ 703.20(d), 703.108(b), 705.10(a), 708a.108(d), 708a.304(h), 708a.308(d), 709.7, 741.11(d), and 745.201(c), subpart J to part 747 of this chapter, and § 750.6(b).

* * * * *

[FR Doc. 2021–11055 Filed 5–25–21; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2021–0228; Special Conditions No. 25–787–SC]

Special Conditions: Haeco Cabin Solutions, Boeing Commercial Airplanes Model 737–800 Airplane; Structure-Mounted Airbags

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Commercial Airplanes (Boeing) Model 737–800 airplane. This airplane, as modified by Haeco Cabin Solutions (Haeco), will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is structure-mounted airbags designed to protect each occupant from serious head injury in the event of an emergency landing. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this