

79 (incorporated by reference; see § 430.3).

4.3.5. Input voltage must be monitored and regulated to within  $\pm 2$  percent of the voltage required in section 3.1.3 for the duration of the test.

4.3.6. Electrical settings must be as described in section 7.0 IES LM-79 (incorporated by reference; see § 430.3).

4.3.7. An equal number of integrated LED lamps must be positioned in the base up and base down orientations throughout testing.

4.3.8. The integrated LED lamp must be operated at maximum input power. If multiple modes occur at the same maximum input power (such as variable CCT and CRI), the manufacturer can select any of these modes for testing. Measurements of all quantities described in sections 3 and 4 of this appendix must be taken at the same selected mode.

4.4. *Measure Final Lumen Output.* Measure the lumen output at the end of the test duration according to section 3.

4.5. *Calculate Lumen Maintenance and Time to Failure*

4.5.1. Calculate the lumen maintenance of the lamp after the test duration “t” by dividing the final lumen output “ $x_t$ ” by the initial lumen output “ $x_0$ ”. Initial and final lumen output must be measured in accordance with sections 4.1 and 4.4 of this appendix, respectively.

4.5.2. For lumen maintenance values greater than 1, the time to failure (in hours) is limited to a value less than or equal to four times the test duration.

4.5.3. For lumen maintenance values less than 1 but greater than or equal to 0.7, the time to failure (in hours) is calculated using the following equation:

$$\text{Time to Failure} = t * \frac{\ln(0.7)}{\ln\left(\frac{x_t}{x_0}\right)}$$

Where: t is the test duration in hours;  $x_0$  is the initial lumen output;  $x_t$  is the final lumen output at time t, and ln is the natural logarithm function.

The maximum time to failure is limited to four times the test duration t.

4.5.4. For lumen maintenance values less than 0.7, including lamp failures that result in complete loss of light output, time to failure is equal to the previously recorded lumen output measurement at a shorter test duration where the lumen maintenance is greater than or equal to 70 percent, and time to failure shall not be calculated in accordance with section 4.5.3 of this appendix.

## 5. Standby Mode Test Method for Determining Standby Mode Power

In cases where there is a conflict, the language of the test procedure in this appendix takes precedence over IES LM-79 (incorporated by reference; see § 430.3) and IEC 62301 (incorporated by reference; see § 430.3).

### 5.1. Test Conditions and Setup

5.1.1. The ambient conditions, power supply, electrical settings, and instrumentation must be established in accordance with the specifications in sections 2.0, 3.0, 7.0, and 8.0 of IES LM-79 (incorporated by reference; see § 430.3), respectively.

5.1.2. An equal number of integrated LED lamps must be positioned in the base up and base down orientations throughout testing.

5.1.3. The integrated LED lamp must be operated at the rated voltage throughout testing. For an integrated LED lamp with multiple rated voltages, the integrated LED lamp must be operated at 120 volts. If an integrated LED lamp with multiple rated voltages is not rated for 120 volts, the integrated LED lamp must be operated at the highest rated input voltage.

### 5.2. Test Method, Measurements, and Calculations

5.2.1. Standby mode power consumption must be measured for integrated LED lamps if applicable.

5.2.2. The integrated LED lamp must be stabilized prior to measurement as specified in section 5.0 of IES LM-79 (incorporated by reference; see § 430.3). The stabilization variation is calculated as [maximum—minimum]/minimum] of at least three readings of the input power and lumen output over a period of 30 minutes, taken 15 minutes apart.

5.2.3. The integrated LED must be configured in standby mode by sending a signal to the integrated LED lamp instructing it to have zero light output.

5.2.4. The standby mode power in watts must be measured as specified in section 5 of IEC 62301 (incorporated by reference; see § 430.3).

[FR Doc. 2014-14823 Filed 6-25-14; 8:45 am]

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## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Parts 701 and 722

RIN 3133-AE36

### Appraisals—Availability to Applicants and Requirements for Transactions Involving an Existing Extension of Credit

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

**ACTION:** Proposed rule.

**SUMMARY:** As part of NCUA’s Regulatory Modernization Initiative, the NCUA Board (Board) is proposing to revise two of NCUA’s regulations regarding appraisals. Firstly, the Board is proposing to amend NCUA’s regulations to eliminate the now duplicative requirement that federal credit unions (FCUs) make available, to any requesting member/applicant, a copy of the appraisal used in connection with that member’s application for a loan secured by a first lien on a dwelling. A recent amendment to the Consumer Financial Protection Bureau’s (CFPB) Regulation B requires that all creditors, including FCUs, now automatically provide applicants with free copies of all appraisals and other written valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling. Secondly, the proposed rule would amend NCUA’s appraisal regulations by expanding the current exemption for certain transactions involving an existing extension of credit. Under the expanded exemption, federally insured credit unions (FICUs) would be able to refinance or modify a real estate-related loan held by the FICU, without having to obtain an appraisal, if there is no advancement of new monies or if there is adequate collateral protection, even with the advancement of new monies.

The proposal would also make a minor technical amendment to the definition of the term “application.” These changes will modernize NCUA’s regulations by better aligning them with the modern marketplace, while also reducing costs for FICUs and their members, and removing outdated regulatory requirements.

**DATES:** Comments must be received on or before August 25, 2014.

**ADDRESSES:** You may submit comments, identified by RIN 3133-AE36, by any of the following methods (Please send comments by one method only):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

• NCUA Web site: <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx>. Follow the instructions for submitting comments.

• Email: Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name]—Comments on Proposed Rule: Appraisals” in the email subject line.

• Fax: (703) 518–6319. Use the subject line described above for email.

• Mail: Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

• Hand Delivery/Courier: Same as mail address.

You can view all public comments on NCUA’s Web site at <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA’s law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518–6546 or send an email to [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

**FOR FURTHER INFORMATION CONTACT:** John H. Brolin, Staff Attorney, Office of General Counsel, at 1775 Duke Street, Alexandria, VA 22314 or telephone: (703) 518–6438.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

##### **II. Proposed Rule**

##### **III. Regulatory Procedures**

##### **I. Background**

NCUA is committed to regulatory modernization, including modifying, streamlining, refining, or repealing outdated rules that are not required by statute and would not jeopardize the safety and soundness of the credit union industry. Each year, NCUA reviews one-third of its regulations for substance and clarity, and provides notice to the public of those regulations under review so that the public may have an opportunity to provide comments. In 2013, NCUA reviewed part 722, along with several other parts of NCUA’s regulations.<sup>1</sup> Part 722 sets forth the appraisal requirements for federally-related real estate transactions. The appraisal requirements in part 722 are generally equivalent to the appraisal requirements of the other federal

financial regulatory agencies (Other Banking Agencies).<sup>2</sup> However, NCUA received numerous responses during the public comment period requesting a specific change to § 722.3(a)(5) to better align NCUA’s appraisal requirements with those of the Other Banking Agencies. Specifically, commenters requested that NCUA expand the current appraisal exemption for existing extensions of credit to allow FCUs to refinance or modify a real estate-related loan held by the credit union in a declining housing market without having to obtain an additional appraisal.

In addition, a number of commenters requested that NCUA eliminate the duplicative portion of the requirements in § 701.31(c)(5) that mandate that FCUs make available, to any requesting member/applicant, a copy of the appraisal used in connection with that member’s application for a loan secured by a first lien on a dwelling. A recent amendment to § 1002.14 of Regulation B by the CFPB requires that all creditors, including FCUs, now automatically provide applicants free copies of all appraisals and other written valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling. As a result of this recent amendment to Regulation B, the requirements of § 701.31(c)(5) in NCUA’s regulations and § 1002.14 in Regulation B now overlap with respect to providing copies of appraisals used in connection with an application for a loan secured by a first lien on a dwelling.

In response to the comments received and NCUA’s regulatory review, the Board proposes to broaden the scope of § 722.3(a)(5), which exempts certain transactions involving an existing extension of credit from the section’s requirement to obtain appraisals, and to narrow the scope of its requirements to provide copies of appraisals under § 701.31(c)(5). In addition, the Board is proposing to make a technical amendment to correct and bring up to date the definition of the term “application” in § 701.31(a)(1).

\* \* \* \* \*

## **II. Proposed Rule**

### ***A. What changes are being proposed to the requirement in § 701.31(c)(5) to provide copies of appraisals to any requesting member/applicants?***

The Board is proposing to amend § 701.31(c)(5), which requires an FCU to retain the appraisal used in connection

with a real estate-related loan application for a period of 25 months and to make a copy of the appraisal available to the applicant upon request. The proposed amendment is in response to recent changes by the CFPB to § 1002.14 of Regulation B.<sup>3</sup> Under revised § 1002.14, all creditors,<sup>4</sup> including FCUs, are now required to automatically provide applicants free copies of all appraisals and other written valuations developed in connection with an application for a loan to be secured by a first lien on a dwelling. In amending the requirements of § 1002.14, the CFPB eliminated a longstanding provision that exempted FCUs from the requirements of the section.<sup>5</sup> As a result of that change, FCUs are now required to comply with the requirements of revised § 1002.14, to automatically provide a free copy of appraisals to applicants, and § 701.31(c)(5), to retain real estate-related appraisals and make a copy available to applicants upon request.

While the two sections differ slightly in scope and mechanism,<sup>6</sup> the requirements in § 701.31(c)(5) relating to loans secured by a first lien on a

<sup>3</sup> See 12 CFR 1002.14; and 78 FR 7216 (Jan. 31, 2013) (Amending Regulation B to implement an ECOA amendment concerning appraisals and other valuations that was enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act.); see also Public Law 111–203, 124 Stat. 1376, section 1474 (2010).

<sup>4</sup> See 12 CFR 1002.2(l), providing in relevant part:

*Creditor* means a person who, in the ordinary course of business, regularly participates in a credit decision, including setting the terms of the credit. The term creditor includes a creditor’s assignee, transferee, or subrogee who so participates. For purposes of §§ 1002.4(a) and (b), the term creditor also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made.

<sup>5</sup> See 78 FR 7216, 7234–7235 (Jan. 31, 2013) (Explaining that the amendments to the appraisal requirements in section 701(e) of ECOA made by section 1474 of the Dodd-Frank Wall Street Reform and Consumer Protection Act broadened the scope of the original appraisal requirement and eliminated the prior justification for exempting credit unions from the requirements of the provision.); compare with 12 CFR 1002.14(b) (2013) (which previously provided: “A creditor that is subject to the regulations of the National Credit Union Administration on making copies of appraisal reports available is not subject to this section.”).

<sup>6</sup> Under § 701.31(c)(5) FCUs are only required to provide a copy of an appraisal to the application if the applicant requests a copy, while § 1002.14 requires that the creditor provide a copy of the appraisal regardless of whether or not a copy is requested by the applicant. In addition, § 701.31(c)(5) only requires FCUs to provide copies of the appraisal, while § 1002.14 requires that applicants provide free copies of all appraisals and other written valuations developed. Finally, § 701.31(c)(5) applies to all real estate-related loan applications, while § 1002.14 of Regulation B applies only to applications for loans to be secured by a first lien on a dwelling.

<sup>1</sup> As part of the 2013 Regulatory Review process, NCUA also reviewed parts 711, 712, 713, 714, 715, 716, 717, 721, 723, 724, 725, 740, 741, 745, and 747 of NCUA’s regulations.

<sup>2</sup> The Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of Currency (OCC).

dwelling are largely duplicative of the requirements of revised § 1002.14. Section 701.31 of NCUA's regulations sets forth nondiscrimination requirements that, among other things, assist FCUs in distinguishing legitimate reasons for denying a loan from those that are prohibited by the Fair Housing Act.<sup>7</sup> NCUA amended its regulations in 1979 to add § 701.31(c), including the current version of paragraph (c)(5), to specifically prohibit an FCU from relying on an appraisal that the FCU knew or should have known was discriminatory.<sup>8</sup> Although not expressly stated in the rulemaking, NCUA intended this requirement to provide the member/applicant with an opportunity to see whether the appraisal on which the FCU relied to approve or deny the loan application is discriminatory. The protections provided by current § 701.31(c)(5), with respect to applications for loans secured by a first lien on a dwelling, appear to be the same protections that are now also provided by the requirement to automatically provide a copy of appraisals in revised § 1002.14. Under both sections, FCU members applying for a loan secured by a first lien on a dwelling are provided an opportunity to see whether the appraisal relied on by the credit union to approve or deny their loan application is discriminatory. Moreover, the requirements of § 1002.14 of Regulation B, which require FCUs to provide copies of appraisals and other written valuations to the applicant without the member/applicant having to request a copy, go well beyond the limited requirement of § 701.31(c)(5) to provide a copy of only the appraisal and only upon the applicant's request.

The consumer protections provided by the two sections do not, however, overlap entirely. Under current § 701.31(c)(5), FCUs are required to provide copies of appraisals used in connection with an application for a real estate-related loan, which includes any loan to be secured by a first lien or a subordinate lien on a dwelling.<sup>9</sup> The protections provided in revised § 1002.14 of Regulation B extend only to appraisals developed in connection with an application for a loan secured by a first lien on a dwelling. To avoid reducing protections for FCU members, the requirements of § 701.31(c)(5) relating to appraisals used in connection with an application for a loan to be

secured by a subordinate lien on a dwelling must be retained. Accordingly, the Board proposes to amend current § 701.31(c)(5) to narrow the scope of the current requirement to cover only loans secured by a subordinate lien on a dwelling.

Proposed § 701.31(c)(5) would require FCUs to make available, to any requesting member/applicant, a copy of the appraisal used in connection with the member's application for a loan to be secured by a subordinate lien on a dwelling. Consistent with the amendment to the first sentence of that section, the second sentence in proposed § 701.31(c)(5) would also be amended to require that the appraisal be available for a period of 25 months after the applicant has received notice from the FCU of the action taken by the credit union on the application for a loan secured by a subordinate lien on a dwelling.

By limiting the requirements to apply only to applications for loans secured by a subordinate lien on a dwelling, NCUA believes the proposed rule would eliminate the duplicative portion of the current requirement while maintaining the current protections provided under § 701.31(c)(5) for FCU member/applicants not covered by new § 1002.14 of Regulation B. The Board requests comment on if there are other real estate-related loan transactions that are covered under current § 1002.14 or current § 701.31(c)(5) that would not be covered if the amendments being made in this proposed rule were finalized. If there are such transactions, the Board requests comment on if those types of transactions should continue to be covered under § 701.31(c)(5). Similarly, the Board requests comment on if there are additional real estate-related loan transactions that would be covered under current § 1002.14 and current § 701.31(c)(5) and that would continue to impose duplicative requirements on credit unions if the amendments being made in this proposed rule are finalized.

*B. What changes are being proposed to the exemption in § 722.3(a)(5) for transactions involving an existing extension of credit?*

Part 722 of NCUA's regulations implements Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA),<sup>10</sup> setting forth, among other things, minimum requirements for real estate-related appraisals used in connection with "federally related transactions."<sup>11</sup>

Section 722.3(a) requires FICUs to obtain an appraisal for all real estate-related financial transactions unless the transaction meets one of nine specifically enumerated exemptions. Current § 722.3(a)(5) exempts from the appraisal requirement transactions that involve an existing extension of credit at the FICU, provided that: (i) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs, and (ii) there has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the credit union's real estate collateral protection after the transaction. Under NCUA's current regulation, for a transaction involving an existing extension of credit to be exempt from the general requirement to obtain an appraisal, the transaction must satisfy both the criteria in paragraph (i) and the criteria in paragraph (ii) of current § 722.3(a)(5).

Although much of the language is identical, the exemption in § 722.3(a)(5) differs significantly from the analogous appraisal exemption in the Other Banking Agencies' regulations.<sup>12</sup> The Other Banking Agencies' regulations provide an appraisal exemption for an existing extension of credit at a lending institution, provided that: (1) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs, or (2) there has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the institution's real estate collateral protection after the transaction, even with the advancement of new monies.<sup>13</sup> Under the Other Banking Agencies' exemptions for existing extensions of credit, a creditor is exempt from the general requirement to obtain an appraisal in a transaction involving an existing extension of credit if the transaction satisfies only one of the two criteria listed above.

NCUA has received a number of comments regarding the lack of parity between NCUA's and the Other Banking Agencies' appraisal exemptions and the added burden of § 722.3(a)(5) on credit unions. Most of the commenters recommend amending § 722.3(a)(5) to match the Other Banking Agencies' appraisal regulations, which they argue would help reduce costs and processing times for members seeking to refinance or modify loans already held by a FICU.

<sup>12</sup> OCC: 12 CFR part 34, subpart C; FRB: 12 CFR part 208, subpart E and 12 CFR part 225, subpart G; and FDIC: 12 CFR part 323.

<sup>13</sup> OCC: 12 CFR 34.43(a)(7); FRB: 12 CFR 225.63(a)(7); and FDIC: 12 CFR 323.3(a)(7).

<sup>7</sup> 42 U.S.C. 3601 *et seq.*

<sup>8</sup> 44 FR 51191.

<sup>9</sup> See 12 CFR 701.31(a)(3) ("Real estate-related loan means any loan for which application is made to finance or refinance the purchase, construction, improvement, repair, or maintenance of a dwelling.").

<sup>10</sup> Public Law 101-73, Title XI, 103 Stat. 511 (1989); 12 U.S.C. 3331 *et seq.*

<sup>11</sup> 12 U.S.C. 3339.

Commenters have also suggested that amending current § 722.3(a)(5) to match the Other Banking Agencies' regulations will give FICUs the ability to address appropriate residential mortgage loan modifications on a more timely basis, and help prevent potential credit union losses without increasing risks to the credit union or the National Credit Union Share Insurance Fund (NCUSIF).

Section 722.3(a)(5) was originally issued in its current form in 1995 as part of a larger final rule making several amendments to NCUA's appraisal regulations.<sup>14</sup> In the preamble to that final rule, the Board specifically explained that it did not adopt an exemption in § 722.3(a)(5) that matched the exemption provided by the Other Banking Agencies' appraisal regulations, citing general safety and soundness concerns.<sup>15</sup> However, after reviewing the public comments received, comparing current § 722.3(a)(5) to the corresponding provisions of the Other Banking Agencies' appraisal rules, and considering relevant loan performance data, the Board believes that amending the requirements of § 722.3(a)(5) to match the Other Banking Agencies' appraisal regulations is appropriate.

The financial crisis that began in 2008 left large numbers of financially distressed homeowners owing more on their mortgages than their homes were worth. During this same period, financial institutions across the nation experienced high levels of mortgage loan defaults and foreclosures. Many borrowers were unable to make their mortgage payments because of unemployment or a reduction in income. Others were unable to afford significant payment increases when their adjustable rate mortgages reset, and they were unable to refinance their loans because of declines in their properties' values. Some borrowers who owed more on their mortgages than their homes were worth simply walked away from their homes because they lacked the incentive to keep their mortgage payments current.

In response to the levels of mortgage loan defaults and foreclosures that occurred in the wake of the financial crisis, NCUA issued guidance to credit unions in 2009 regarding providing loan modifications to residential mortgage borrowers who were unable to meet

their contractual payment obligations by offering them loan modification options.<sup>16</sup> The letter encouraged credit unions to take action to identify and potentially assist borrowers whose financial stress may lead to future impairment in mortgage loan performance. By proactively identifying "at risk" loans, credit unions could measure the potential impacts of borrower defaults on net worth, assess internal liquidity available to help borrowers through loan modifications, and closely monitor the performance of these loans. Moreover, by identifying and assisting "at risk" members before delinquency occurs, a credit union could improve chances for successful modifications and reduce potential losses.

Consistent with the positions noted above, the Board believes that extending the appraisal exemption in § 722.3(a)(5) to cover loan modifications and refinancings in distressed housing markets will improve the timeliness and chances for successful modifications and refinancings that could reduce potential losses to FICUs in the future. Obtaining an appraisal can take a significant amount of time, weeks or months depending on demand and the location of the home. Further, the cost of the appraisal itself, which is almost always paid for by the borrower, can stand as a significant impediment to a distressed borrower being able to refinance or obtain a loan modification. Moreover, obtaining a new appraisal is of little value to a credit union when it was the originating lender and the "at risk" loan is still held by the credit union. Accordingly, the Board proposes to amend § 722.3(a)(5).

Proposed § 722.3(a)(5) would exempt a transaction from the appraisal requirement in § 722.3(a), a transaction that involves an existing extension of credit at the lending FICU, provided that: (i) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs; or (ii) there has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the credit union's real estate collateral protection after the transaction, even with the advancement of new monies. The amendments would provide parity between NCUA and the Other Banking Agencies' exemptions from the requirement to obtain an appraisal for certain transactions involving existing extensions of credit. Current § 722.3(d) would continue to require that transactions exempted from the appraisal requirement under

proposed § 722.3(a)(5) be supported by a written estimate of market value.<sup>17</sup> The Board believes these changes will reduce regulatory burdens on credit unions, and pose no increase in risk to the NCUSIF.

### C. What other changes would the proposed rule make?

For clarity, the proposed rule would also make a technical amendment to the definition of the term "application" in § 701.31(a)(1). Current § 701.31(a)(1) defines the term "application" for purposes of part 701 as carrying the same "meaning of that term as defined in 12 CFR 1002.2(f) (Regulation B)" and then provides a parenthetical quoting the text of the Regulation B definition of application, which has since been revised.<sup>18</sup> As a result, the definition of application in § 1002.2(f) no longer matches the quote in § 701.31(a)(1).<sup>19</sup> Accordingly, the Board is now proposing to make a technical amendment to § 701.31(a)(1) to update the definition.

To avoid the possibility of a similar situation arising in the future, NCUA proposes to remove the parenthetical quote in § 701.31(a)(1) and maintain just the cross citation to the definition of "application" in Regulation B. Proposed § 701.31(a)(1) would provide that for purposes of part 701 the term "application" carries the meaning of that term as defined in 12 CFR 1002.2(f)

<sup>17</sup> § 722.3(d) providing:

*Valuation requirement.* Secured transactions exempted from appraisal requirements pursuant to paragraphs (a)(1) and (a)(5) of this section and not otherwise exempted from this regulation or fully insured shall be supported by a written estimate of market value, as defined in this regulation, performed by an individual having no direct or indirect interest in the property, and qualified and experienced to perform such estimates of value for the type and amount of credit being considered.

<sup>18</sup> See § 701.31(a)(1) (Quoting regulation B as follows: "Application means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested." (emphasis added)).

<sup>19</sup> See § 1002.2(f) (Defining the term "application" as follows: Application means an oral or written request for an extension of credit that is made in accordance with procedures used by a creditor for the type of credit requested. *The term application does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit.* A completed application means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral). The creditor shall exercise reasonable diligence in obtaining such information. (emphasis added)).

<sup>14</sup> 60 FR 51889 (Oct. 4, 1995).

<sup>15</sup> See, *id.* at 51891 (Providing in relevant part: One "commenter stated that banks . . . have this exemption and credit unions would be at a competitive disadvantage without it. The Board believes that an appraisal is necessary if new funds are advanced. The Board believes that safety and soundness concerns outweigh the possible minimal effects on competition.").

<sup>16</sup> 09-CU-19 (Sept. 2009).

(Regulation B). This amendment would avoid the possibility, in the case of future amendments to the text of § 1002.2(f), of discrepancies between the text of the definition of “application” in Regulation B and the parenthetical in § 701.31(a)(1) which simply quotes the text of the Regulation B definition. This revision would not make any substantive changes to the requirements of NCUA’s regulations.

### III. Regulatory Procedures

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA)<sup>20</sup> requires NCUA to provide an initial regulatory flexibility analysis with a proposed rule to certify that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include credit unions with assets less than or equal to \$50 million) and publish its certification and a short explanatory statement in the **Federal Register** also with the proposed rule.<sup>21</sup> The proposed amendments to parts 701 and 722 will only reduce regulatory impacts on credit unions by exempting credit unions from current regulatory requirements. Accordingly, the Board certifies the proposed rule will not have a significant economic impact on a substantial number of small credit unions.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or increases an existing burden.<sup>22</sup> For purposes of the PRA, a paperwork burden may take the form of a reporting or recordkeeping requirement, both referred to as information collections. This proposed rule would not impose or expand upon any existing reporting or recordkeeping requirements. Accordingly, this proposed rule would not create new paperwork burdens or increase any existing paperwork burdens.

#### *Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency, as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. The proposed rule would not have substantial direct effects on the

states, on the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. NCUA has, therefore, determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

#### *Assessment of Federal Regulations and Policies on Families*

NCUA has determined that this proposed 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).

#### 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.

##### *12 CFR Part 722*

Appraisals, Credit unions, Mortgages, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on June 19, 2014.

**Gerard Poliquin,**  
*Secretary of the Board.*

For the reasons discussed above, the NCUA Board proposes to amend 12 CFR parts 701 and 722 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.

■ 2. Amend § 701.31 as follows:

#### **§ 701.31 [Amended]**

- a. In paragraph (a)(1) delete the words “, which is as follows:” and delete the parenthetical “an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested”;
- b. In paragraph (c)(5) in the first sentence, remove the words “a copy of

the appraisal used in connection with that member’s real estate related loan application” and add in their place the words “a copy of the appraisal used in connection with that member’s application for a loan to be secured by a subordinate lien on a dwelling”, and, in the second sentence, remove the words “real estate-related loan application” and add in their place the words “application for a loan to be secured by a subordinate lien on a dwelling”.

### **PART 722—APPRAISALS**

■ 4. The authority citation for part 722 continues to read as follows:

**Authority:** 12 U.S.C. 1766, 1789 and 3339. Section 722.3(f) is also issued under 15 U.S.C. 1639h.

■ 5. Amend § 722.3 as follows:

#### **§ 722.3 [Amended]**

- a. In paragraph (a)(5) add the word “lending” before the words “credit union”;
- b. In paragraph (a)(5)(i) remove the word “and” and add in its place the word “or”; and
- c. In paragraph (a)(5)(ii) add the words “, even with the advancement of new monies” to the end of the paragraph.

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### **NATIONAL CREDIT UNION ADMINISTRATION**

#### **12 CFR Part 709**

##### **RIN 3133–AE41**

#### **Safe Harbor**

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

**ACTION:** Proposed rule.

**SUMMARY:** The NCUA Board (“Board”) proposes to amend its regulations regarding the treatment by the Board, as liquidating agent or conservator (the “liquidating agent” or “conservator,” respectively) of a federally insured credit union (“FICU”) of financial assets transferred by the credit union in connection with a securitization or a participation. The proposed rule continues the safe harbor for financial assets transferred in connection with securitizations and participations in which the financial assets were transferred in compliance with the existing regulation and defines the conditions for safe harbor protection for securitizations and participations for which transfers of financial assets would be made after the effective date of this proposed rule.

<sup>20</sup> 5 U.S.C. 601 *et seq.*

<sup>21</sup> 78 FR 4032 (Jan. 18, 2013).

<sup>22</sup> 44 U.S.C. 3507(d); 5 CFR part 1320.