

**7535-01-U**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Parts 701, 706, and 790**

**RIN 3133-AE42**

**Technical Amendments.**

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

**ACTION:** Final rule.

**SUMMARY:** The Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>1</sup> (Dodd-Frank Act) repealed NCUA’s rulemaking authority under the Federal Trade Commission Act (FTC Act).<sup>2</sup> As a result, the NCUA Board (Board) is now repealing NCUA’s regulations governing unfair or deceptive acts or practices. The Board is also making a number of technical amendments to other NCUA regulations to conform them to the agency’s current central and field office structures. Additionally, the Board is amending NCUA’s payday alternative loans regulation to replace all references to “short-term, small amount loans” and “STS loans” with

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<sup>1</sup> Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> Section 1092(2) of the Dodd-Frank Act, amending 15 U.S.C. 57a(f).

corresponding references to “payday alternative loans” and “PAL loans.” The latter terms more accurately reflect the nature and purpose of this loan product.

**DATES:** The final rule is effective on [**insert date of publication in the FEDERAL REGISTER**].

**FOR FURTHER INFORMATION CONTACT:** Frank Kressman, Associate General Counsel, Office of General Counsel, at 1775 Duke Street, Alexandria, VA 22314 or telephone: (703) 518-6540.

**SUPPLEMENTARY INFORMATION:**

- I. Background and Purpose of the Final Rule
- II. Regulatory Amendments
- III. Regulatory Procedures

**I. Background and Purpose of the Final Rule**

*Why is the NCUA Board issuing this rule?*

Part 706

In 2010, President Obama signed into law the Dodd-Frank Act. The Dodd-Frank Act substantially changed the federal legal framework with respect to consumer financial protection

regulation. Among the many changes, section 1092 of the Dodd-Frank Act repealed NCUA's rulemaking authority under the FTC Act.<sup>3</sup> As a result, the Board is repealing NCUA's rules under part 706, titled "Unfair or Deceptive Acts or Practices."

Despite the repeal of part 706, NCUA still has supervisory and enforcement authority regarding unfair or deceptive acts or practices,<sup>4</sup> which could include the practices previously addressed in part 706. NCUA may determine that statutory violations exist if federal credit unions engage in acts or practices that are prohibited by the Dodd-Frank Act or the FTC Act. Such prohibited acts or practices may include, but are not limited to:

- Including confessions of judgment, waivers of exemptions, wage assignments, or security interests on household goods in consumer contracts;
- Misrepresenting the nature or extent of cosigner liability; and
- Pyramiding late fees.

### Agency Structure

In November 2013, the Board approved a restructuring of NCUA's central office. This restructuring consisted of transferring certain functions from one office to another and establishing the Office of Continuity and Security Management (OCSM). OCSM performs all

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<sup>3</sup> 15 U.S.C. 57a(f) as amended by the Dodd-Frank Act.

<sup>4</sup> NCUA has authority to enforce section 5 of the FTC Act (15 U.S.C. 45), and sections 1031 and 1036 of the Dodd-Frank Act (12 U.S.C. §§ 5531 and 5536), under the Federal Credit Union Act. *See* 12 U.S.C. §§ 1786(e) and 1786(k)(2).

security-related functions that were formerly the responsibility of several different offices. The core functions of OCSM are national continuity programs, emergency management and physical security, personnel security, and intelligence and information security. As a result of this and other organizational changes described in section II, the Board is making a number of conforming technical amendments to NCUA's regulations.

### Payday Alternative Loans

In September 2010, the Board amended its general lending regulation to enable federal credit unions (FCUs) to offer payday alternative loans (PAL loans).<sup>5</sup> PAL loans serve as a viable alternative to predatory payday loans and can help members break free of their dependency on high-cost predatory payday loans. The Board encourages FCUs to make PAL loans available for their members who need them, provided they are offered in a safe and sound manner. To be more readily understood, NCUA is amending the current terminology used to describe this type of loan. Specifically, §701.21 currently refers to these loans as “short-term, small amount loans” or “STS loans.” The Board believes that replacing that terminology with “payday alternative loans” or “PAL loans” more accurately reflects the nature and purpose of this loan product. The updated terminology also is more consistent with the way NCUA and some industry stakeholders currently refer to this loan product. This important loan product deserves nomenclature that more precisely describes its function and is more readily understood.

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<sup>5</sup> 75 FR 58285 (Sept. 24, 2010).

## **II. Regulatory Amendments**

### *1. Part 706—Unfair or Deceptive Acts or Practices*

As discussed above, in response to changes made by the Dodd-Frank Act, this final rule repeals 12 CFR part 706.

### *2. Part 790—Changes to NCUA’s Central and Field Office Structure*

As discussed above, the Board is amending part 790 of NCUA’s regulations to conform it to NCUA’s current central and field office structures.

#### *Office of Continuity and Security Management*

The Office of Continuity and Security Management (OCSM), created in November 2013, began operating in January 2014. It was created to aggregate all of the agency’s security-related functions into one office. The primary consolidated functions are continuity of operations planning, physical security, and personnel security. Also, NCUA put in place an additional security function to address national security issues affecting the financial services industry. All federal agencies are required to comply with various statutes and Executive Orders related to the safeguarding of national assets. Through OCSM, NCUA will be able to more efficiently respond to these federal mandates and conduct its security-related functions.

The final rule amends Part 790 to add a new paragraph describing OCSM and its functions.

#### *Office of the Chief Financial Officer*

The final rule amends the description of the Office of Chief Financial Officer to add strategic planning as one of its duties. NCUA shifted this duty from the Office of Chief Information Officer to better utilize staffing resources.

#### *Office of Consumer Protection*

The final rule amends the description of the Office of Consumer Protection (OCP) to reflect that the office now has four divisions. The Board added two divisions within OCP to more efficiently balance and structure the office's workload. In addition, NCUA deleted the duties of the Ombudsman from OCP's description. The Executive Director's office now supervises the Ombudsman.

#### *Office of the Executive Director*

The Board established the Ombudsman position in April 1995, as required by the Riegle Community Development and Regulatory Improvement Act of 1994. The Ombudsman operates as an objective third party to resolve disputes that cannot be resolved at the operational level.

In 2013, the Board elevated the position of the Ombudsman to the Executive Director's office.

It is supervised by the Executive Director's office and reports directly to the Board. Previously, OCP oversaw the Ombudsman's duties, and the Ombudsman reported to the Director of OCP.

### *Regional Offices*

NCUA realigned its regional offices effective January 1, 2014. This was designed to create geographically compact districts that balance workload, improve efficiency, and reduce travel costs. In addition, the new regional structure coincides with other changes to strengthen NCUA's supervision, such as the creation of the Office of National Examinations and Supervision. Each NCUA region now has approximately an equal number of examiners, in addition to supervision, special actions, and support personnel.

The Board is updating the table in § 790.2(c)(1)(i), indicating the states that each region is responsible for supervising. Nine states have been transferred among the NCUA regional offices for the reasons noted above.<sup>6</sup> The changes are as follows:

- Wisconsin is in Region I;
- Ohio is in Region II;
- Arkansas and Louisiana are in Region III;
- Colorado, Montana, New Mexico, and Wyoming are in Region IV and
- California is in Region V.

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<sup>6</sup> <http://www.ncua.gov/about/Leadership/Pages/field-program-offices.aspx>. This map shows the current regional alignment.

Lastly, the territory of American Samoa is no longer listed in § 790.2(c)(1)(i) as NCUA no longer supervises any credit unions in that jurisdiction.

### *3. Part 701—Payday Alternative Loans*

As discussed above, the Board is amending NCUA’s payday alternative loans regulation to replace the terms “short-term, small amount loans” and “STS loans” with the terms “payday alternative loans” and “PAL loans” to more accurately reflect the nature and purpose of this loan product and to make it more readily understood.

## **III. Regulatory Procedures**

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under \$50 million in assets).<sup>7</sup> This final rule only makes non-substantive, technical changes. NCUA certifies that these technical amendments will not have a significant economic impact on a substantial number of small credit unions.

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<sup>7</sup> 5 U.S.C. 603(a).



### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.<sup>8</sup> For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. NCUA has determined that the technical amendments in this final rule do not increase the paperwork requirements under PRA or regulations of the Office of Management and Budget.

### *Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

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

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<sup>8</sup> 44 U.S.C. 3507(d); 5 CFR part 1320.

NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.<sup>9</sup>

### *Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act of 1996<sup>10</sup> (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act (APA).<sup>11</sup> NCUA has submitted this rule to the Office of Management and Budget for it to determine if the final rule is a “major rule” for purposes of SBREFA. NCUA does not believe the rule is major.

### *Final Rule*

Generally, the APA requires a federal agency to provide the public with notice and the opportunity to comment on agency rulemakings. The amendments in this rule are non-substantive and technical, or involve only matters relating to management and personnel and are exempt from APA notice and comment requirements.<sup>12</sup> They reflect changes to NCUA’s organizational structure, remove duplicative and imprecise language, make minor changes

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<sup>9</sup> Pub. L. 105–277, 112 Stat. 2681 (1998).

<sup>10</sup> Pub. L. 104–121, 110 Stat. 857 (1996).

<sup>11</sup> 5 U.S.C. 551.

<sup>12</sup> 5 U.S.C. 553(a)(2) and 553(b)(3)(B).

updating cross citations, and make minor changes which are statutorily required by the Dodd-Frank Act. The APA permits an agency to forego the notice and comment period under certain circumstances, such as when a rulemaking is technical and non-substantive. NCUA finds that, in this instance, notice and public comment are unnecessary under section 553(b)(3)(B) of the APA.<sup>13</sup> NCUA also finds good cause to dispense with the 30-day delayed effective date requirement under section 553(d)(3) of the APA.<sup>14</sup> The rule, therefore, will be effective immediately upon publication.

## **List of Subjects**

### **12 CFR Part 701**

Credit, Credit unions, Reporting and recordkeeping requirements.

### **12 CFR Part 706**

Consumer protection, Credit, Credit unions, Deception, Intergovernmental relations, Trade practices, Unfairness.

### **12 CFR Part 790**

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<sup>13</sup> 5 U.S.C. 553(b)(3)(B).

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

Organization and functions (Government agencies).

By the National Credit Union Administration Board on \_\_\_\_\_.

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Gerard Poliquin

Secretary of the Board

For the reasons discussed above, the NCUA Board amends 12 CFR parts 701, 706, and 790 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 701.31 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 12 U.S.C. 4311–4312.

2. Amend §701.21(c)(7)(iii) as follows:
  - a. Remove the words “Short-term, small amount” wherever they appear and add, in their place, the words “Payday alternative”.

b. Remove the words “short-term, small amount” wherever they appear and add, in their place, the words “payday alternative”.

c. Remove the words “an STS” wherever they appear and add, in their place, the words “a PAL”.

d. Remove the term “STS” wherever it appears and add, in its place, the term “PAL”.

### **PART 706—UNFAIR OR DECEPTIVE ACTS OR PRACTICES**

3. Part 706 is removed and reserved.

### **PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION**

4. The authority citation for part 790 continues to read as follows:

**Authority:** 12 U.S.C. 1766, 1789, 1795f.

5. Amend §790.2 as follows:

a. Revise paragraphs (b)(4), (b)(6), and (b)(15).

b. Add paragraph (17) at the end of paragraph (b).

c. Revise paragraph (c)(1)(i).

The revisions read as follows:

**§ 790.2 Central and field office organization.**

\* \* \* \* \*

(b)\* \* \*

(4) *The Office of the Chief Financial Officer.* NCUA's Chief Financial Officer plans, organizes, implements, directs, and provides overall direction and leadership for: (1) agency-wide strategic planning, budget formulation, and performance reporting; (2) the agency's financial management system and financial reporting functions; (3) procurement and facilities management to include various administrative responsibilities such as property management, mail services, graphics support, supply management, printing, and publications management; and (4) managing the operations of the Operating and Insurance Funds, including payroll, travel policies, revenue assessment, and dividend distributions.

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(6) *Office of the Executive Director.* The Executive Director reports to the entire NCUA Board. The Executive Director translates NCUA Board policy decisions into workable programs, delegates responsibility for these programs to appropriate staff members, and coordinates the

activities of the senior executive staff, which includes: the General Counsel; the Regional Directors; and the Office Directors for Chief Financial Officer, Examination and Insurance, Human Resources, Chief Information Officer, and Public and Congressional Affairs. Because of the nature of the attorney/client relationship between the Board and General Counsel, the General Counsel may be directed by the Board not to disclose discussions and/or assignments with anyone, including the Executive Director. The Executive Director is otherwise to be privy to all matters within senior executive staff's responsibility. The Executive Director also serves as the agency's Director of Equal Employment Opportunity. The Office of the Executive Director also supervises the agency's ombudsman. The ombudsman investigates complaints and recommends solutions on regulatory issues that cannot be resolved at the regional level.

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(15) *Office of Consumer Protection.* The Office of Consumer Protection contains four divisions: (1) the Division of Consumer Compliance Policy and Outreach; (2) the Division of Consumer Affairs; (3) the Division of Consumer Access; and (4) the Division of Consumer Access-South. The office provides consumer services, including consumer education and complaint resolution; establishes, consolidates, and coordinates consumer protections within the agency; acts as the central liaison on consumer protection with other federal agencies; and nationalizes field of membership processing and chartering activities.

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(17) *The Office of Continuity and Security Management.* The Director of the Office of Continuity and Security Management is responsible for NCUA's emergency preparedness and for coordinating the response to natural disasters or national security events; for timely dissemination of information on cyber threats, terrorism, foreign criminal activity, and other national security threats to the agency or to the credit union sector; and for conducting risk assessments and managing executive branch programs to protect NCUA personnel and facilities, and to safeguard classified national security information.

(c) \* \* \*

(1) *Regional Offices.* (i) The NCUA has five Regional Offices:



<b>Region No.</b>	<b>Area within region</b>	<b>Office address</b>
I	Connecticut, Maine, Massachusetts, Michigan, New Hampshire, New York, Rhode Island, Vermont, Wisconsin	9 Washington Square, Washington Avenue Extension, Albany, NY 12205-5512.
II	Delaware, District of Columbia, Maryland, New Jersey, Ohio, Pennsylvania, Virginia, West Virginia	1900 Duke St., Suite 300, Alexandria, VA 22314-3498.
III	Alabama, Arkansas, Florida, Georgia, Indiana, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virgin Islands	7000 Central Parkway, Suite 1600, Atlanta, GA 30328-4598.
IV	Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wyoming	4807 Spicewood Springs Road, Suite 5200, Austin, TX 78759-8490.
V	Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Utah, Washington	1230 W. Washington Street, Suite 301, Tempe, AZ 85281.

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