

**7535-01-U**

**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:** Final rule.

**SUMMARY:** As part of NCUA’s Regulatory Modernization Initiative, the NCUA Board (Board) is revising two of NCUA’s regulations regarding appraisals. In response to a recent amendment to the Consumer Financial Protection Bureau’s (CFPB) Regulation B, the Board is eliminating from NCUA’s regulations the now duplicative requirement that federal credit unions (FCUs) make available, to any requesting member, a copy of the appraisal used in connection with that member’s application for a loan secured by a first lien on a dwelling. Also, the Board is amending NCUA’s appraisal regulations by expanding the current exemption for certain transactions involving an existing extension of credit. More specifically, under the expanded

exemption, a federally insured credit union (FICU) will be permitted to refinance or modify a real estate-related loan held by the FICU, without having to obtain another appraisal, if there is no advancement of new monies or if there is adequate collateral protection even with the advancement of new monies. Lastly, the Board is making a minor technical amendment to the definition of the term “application.”

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Pamela Yu, Senior Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428 or telephone (703) 518-6593.

**SUPPLEMENTARY INFORMATION:**

**I. Background and Proposal**

**II. Final Rule**

**III. Regulatory Procedures**

**I. Background and Proposal**

A. Background

Each year, NCUA reviews one-third of its regulations for substance and to ensure they are clear, current, and appropriate in scope. NCUA notifies the public of those regulations under review so that the public may have an opportunity to provide comments on those regulations.

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 transactions involving real estate. The appraisal requirements in part 722 are generally equivalent to the appraisal requirements of the other federal financial regulatory agencies.<sup>2</sup>

However, NCUA received numerous comments 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 federal financial regulatory agencies. Specifically, commenters requested that NCUA expand the current appraisal exemption for existing extensions of credit to allow a FICU to refinance or modify a real estate-related loan held by that FICU without having to obtain an additional appraisal.

In addition, a number of commenters requested that NCUA eliminate the now duplicative portion of §701.31(c)(5) of NCUA's regulations, 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. A recent amendment to §1002.14

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<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> For purposes of this rulemaking, these agencies are the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of the Comptroller of Currency.

of CFPB's Regulation B requires that all creditors, including FCUs, 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 amendment to Regulation B, the requirements of §701.31(c)(5) of NCUA's regulations and §1002.14 of Regulation B 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.

B. June 2014 proposed rule.

In June 2014, as part of NCUA's regulatory review and in response to public comments received, the Board issued a proposed rule to amend two of NCUA's regulations regarding appraisals.<sup>3</sup> Consistent with NCUA's Regulatory Modernization Initiative, the proposed amendments improve NCUA's regulations by better aligning them with the current marketplace, reduce costs for FCUs and their members, and remove outdated regulatory requirements.

Specifically, the Board proposed to make the following three changes to NCUA's regulations. First, as requested by the public, the Board proposed to eliminate the now duplicative requirement in NCUA's regulations that requires FCUs to make available, to any requesting member, a copy of the appraisal used in connection with that member's application for a loan

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<sup>3</sup> 79 FR 36248 (June 26, 2014).

secured by a first lien on a dwelling. FCUs would still be required to provide a borrower with a copy of the appraisal used for a loan involving a subordinate lien on a dwelling.

Additionally, the Board proposed to amend §722.3(a)(5) of NCUA's appraisal regulations to better align this appraisal exemption for existing extensions of credit with that applicable to banks. The current provision 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 the 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).

The revised provision will allow FICUs to refinance or modify existing real estate-related loans without obtaining an appraisal if (1) there is no advancement of new monies; or (2) in transactions where there is an advancement of new monies, if there is no obvious and material change in market conditions or physical aspects of the property. In addition to achieving parity with banking regulations, the amendment gives FICUs more latitude to modify or refinance existing real estate loans for distressed borrowers without having to obtain an appraisal.

Finally, the Board proposed to make a minor technical amendment to correct and update the definition of the term "application" in §701.31(a)(1) of NCUA's regulations. 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. As a result, the definition of application in §1002.2(f) no longer matches the quote in §701.31(a)(1). The technical amendment to §701.31(a)(1) will update the definition.

## **II. Final Rule**

NCUA received thirteen comments on the proposed rule. Two comments were received from trade associations representing credit unions, seven from state credit union leagues, one from an FCU, and three from federally insured, state-chartered credit unions.

All of the comments were supportive of the proposal. Commenters generally indicated that the proposed amendments will provide greater parity and consistency among federal financial regulations, eliminate redundancies, and benefit credit unions and their members by easing administrative and cost impediments to successful loan modifications. Several commenters, however, requested clarification of current regulatory requirements or offered comments beyond the scope of the June 2014 proposal.

For example, two commenters suggested eliminating the current requirement that FCUs make available, to any requesting member, a copy of the appraisal used in connection with that member’s application for a dwelling secured by a subordinate lien. The Board, however, proposed only to eliminate the portion of the current requirement in §701.31(c)(5) relative to

loans secured by a first lien on a dwelling because it is duplicative of Regulation B. The Board did not propose to eliminate those current protections provided under §701.31(c)(5) for FCU members regarding loans secured by subordinate liens because that portion of NCUA's regulations are not duplicative of Regulation B.

As stated in the proposed rule, the consumer protections provided by NCUA's regulation and Regulation B do not overlap entirely. Under current §701.31(c)(5), FCUs are required under certain circumstances 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. The protections provided in §1002.14 of Regulation B extend to appraisals developed in connection with an application for a loan secured by a first lien on a dwelling. Despite this, the Board continues to believe the requirements of §701.31(c)(5) relating to appraisals used in connection with a loan secured by a subordinate lien on a dwelling must be retained as a consumer protection for FCU members.

Several commenters asked for additional amendments to modify or clarify existing definitions or other current regulatory requirements. For example, one commenter requested clarification of the scope and meaning of the term "dwelling" in §701.31(a)(2) of NCUA's regulations. The Board notes that the proposed rule did not modify any existing definitions or impose any new requirements on credit unions. All definitions in the current regulation have the same meaning under this final rule as they do under the current regulation. The Board also emphasizes that this final rule does not modify the 2010 Federal Financial Institutions Examination Council's

interagency appraisal and evaluation guidelines and credit unions may continue to rely on that guidance.

Accordingly, the Board is adopting the June 2014 proposed rule as final without change.

### **III. Regulatory Procedures**

#### ***A. Regulatory Flexibility Act***

The Regulatory Flexibility Act (RFA)<sup>4</sup> requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (defined for purposes of the RFA to include credit unions with assets less than \$50 million).<sup>5</sup> The amendments to parts 701 and 722 will only reduce regulatory impacts on credit unions by exempting them from certain regulatory requirements. Accordingly, the Board certifies the final rule will not have a significant economic impact on a substantial number of small credit unions.

#### ***B. Paperwork Reduction Act***

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<sup>4</sup> 5 U.S.C. 601 *et seq.*

<sup>5</sup> 78 FR 4032 (Jan. 18, 2013).



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>6</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 final rule would not impose or expand upon any existing reporting or recordkeeping requirements. Accordingly, this final rule would not create new paperwork burdens or increase any existing paperwork burdens.

*C. 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 final 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 final rule does not constitute a policy that has federalism implications for purposes of the executive order.

*D. Assessment of Federal Regulations and Policies on Families*

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<sup>6</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 §654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996<sup>7</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.<sup>8</sup> NCUA does not believe this final rule is a “major rule” within the meaning of the relevant sections of SBREFA because it will only reduce regulatory burden on credit unions by exempting them from certain regulatory requirements. NCUA has submitted the rule to the Office of Management and Budget for its determination in that regard.

**List of Subjects**

**12 CFR Part 701**

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<sup>7</sup> Pub. L. 104–121, 110 Stat. 857 (1996).

<sup>8</sup> 5 U.S.C. 551.

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 [ ], 2014.

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Gerard Poliquin

Secretary of the Board

For the reasons discussed above, the NCUA Board amends 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 indented definition 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**

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

**AUTHORITY:** 12 U.S.C. 1766, 1789 and 3339.

4. 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.