

(f) A party seeking court review of an Adverse Determination must first appeal the Adverse Determination under this section.

#### § 603.17 Fees.

(a) The NCPC shall charge for the duplication of Records under this subpart in accordance with the schedule of fees set forth in NCPC's FOIA Regulations. The NCPC shall not charge duplication fees when the Requester asks to inspect the Records personally but is provided copies at the discretion of the agency.

(b) The NCPC shall not charge any fees for the search for or review of Records requested by an Individual.

#### § 603.18 Privacy Impact Assessments.

(a) Consistent with the requirements of the E-Government Act and OMB Memorandum M-03-22, the NCPC shall conduct a PIA before:

(1) Developing or procuring IT systems or projects that collect, maintain, or disseminate IFF; or

(2) Installing a new collection of information that will be collected, maintained, or disseminated using IT and includes IFF for 10 or more persons (excluding agencies, instrumentalities or employees of the federal government).

(b) The PIA shall be prepared through the coordinated effort of the NCPC's privacy Officers (SAOP, PAO), Division Directors, CIO, and IT staff.

(c) As a general rule, the level of detail and content of a PIA shall be commensurate with the nature of the information to be collected and the size and complexity of the IT system involved. Specifically, a PIA shall analyze and describe:

(1) The information to be collected;

(2) The reason the information is being collected;

(3) The intended use for the information;

(4) The identity of those with whom the information will be shared;

(5) The opportunities Individuals have to decline to provide the information or to consent to particular uses and how to consent;

(6) The manner in which the information will be secured; and

(7) The extent to which the system of records is being created under the Privacy Act.

(d) In addition to the information specified in §§ (b)(1)–(7) above, the PIA must also identify the choices NCPC made regarding an IT system or collection of information as result of preparing the PIA.

(e) The CCB shall verify that a PIA has been prepared prior to approving a request to develop or procure

information technology that collects, maintains, or disseminates Information in Identifiable Form.

(f) The SAOP shall approve and sign the NCPC's PIA. If the SAOP is the Contracting Officer for the IT system that necessitated preparation of the PIA, the Executive Director shall approve and sign the PIA.

(g) Following approval of the PIA, the NCPC shall post the PIA document on the NCPC Web site located at [www.ncpc.gov](http://www.ncpc.gov).

Dated: July 24, 2017.

**Anne R. Schuyler,**

*General Counsel.*

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## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 741

RIN 3133-AE77

#### Requirements for Insurance; National Credit Union Share Insurance Fund Equity Distributions

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The NCUA Board (Board) proposes to amend its share insurance requirements rule to provide federally insured credit unions (FICUs) with greater transparency regarding the calculation of a FICU's proportionate share of a declared equity distribution from the National Credit Union Share Insurance Fund (NCUSIF) and to add a temporary provision to govern NCUSIF equity distributions resulting from the Corporate System Resolution Program. The Board also proposes to prohibit a FICU that terminates federal share insurance coverage during a particular calendar year from receiving an NCUSIF equity distribution for that calendar year to provide greater fairness to FICUs that remain federally insured. The Board proposes to make technical and conforming amendments to other aspects of the share insurance requirements rule in light of these proposed changes.

**DATES:** Comments must be received on or before Tuesday, September 5, 2017.

**ADDRESSES:** You may submit comments 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 Requirements for Insurance; National Credit Union Share Insurance Fund Equity Distributions” 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.

**PUBLIC INSPECTION:** 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 22314-3428, by appointment weekdays between 9 a.m. and 3 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:** Benjamin M. Litchfield, Staff Attorney, Office of General Counsel, at (703) 518-6540; or Steve Farrar, Supervisory Financial Analyst, Office of Examination and Insurance, at (703) 518-6360. You may also contact them at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

#### SUPPLEMENTARY INFORMATION:

- Background
- Section-by-Section Analysis
- Technical and Conforming Amendments
- Regulatory Procedures

#### I. Background

NCUA is the chartering authority for federal credit unions and the federal share insurer for FICUs.<sup>1</sup> In NCUA's capacity as federal share insurer, the Board, among other things, administers the NCUSIF, a revolving fund created within the United States Treasury to

<sup>1</sup> NCUA's authority to charter federal credit unions is contained in Title I of the Federal Credit Union Act (12 U.S.C. 1752-1775), and its various authorities as federal share insurer are contained in Title II of the Federal Credit Union Act (12 U.S.C. 1781-1790e). Title III of the Federal Credit Union Act (12 U.S.C. 1795-1795k) governs the Board's responsibilities overseeing the NCUA Central Liquidity Facility, a federal instrumentality that provides liquidity for member credit unions.

provide federal share insurance coverage to FICU members.<sup>2</sup>

The Federal Credit Union Act (FCU Act) requires a FICU to pay and maintain an NCUSIF capitalization deposit equal to 1 percent of a FICU's insured shares, in part, to capitalize the NCUSIF.<sup>3</sup> The amount of a FICU's required NCUSIF capitalization deposit is adjusted periodically to reflect changes in the FICU's insured shares.<sup>4</sup> For a FICU with assets less than \$50 million, this adjustment occurs annually.<sup>5</sup> For all other FICUs, this adjustment occurs semiannually.<sup>6</sup> A FICU that terminates federal share insurance coverage is entitled to have its NCUSIF capitalization deposit returned within a reasonable time.<sup>7</sup>

The FCU Act also requires a FICU to pay a federal share insurance premium to the NCUSIF at such times as the Board prescribes but no more than twice in any calendar year.<sup>8</sup> The FCU Act permits the Board to assess a federal share insurance premium if the NCUSIF's equity ratio is less than 1.3 percent, but only in an amount necessary to restore the equity ratio to 1.3 percent.<sup>9</sup> However, if the Board projects that the NCUSIF's equity ratio will fall below 1.2 percent within the next six months or if the NCUSIF's equity ratio actually falls below 1.2 percent at any time, the FCU Act requires the Board to implement a restoration plan or charge a premium.<sup>10</sup>

Furthermore, the FCU Act requires the Board to make a proportionate distribution from the NCUSIF to FICUs for each year where, at the end of the year, the following circumstances are present: (1) The NCUSIF has no outstanding loans from the United States Treasury and any outstanding interest on those loans has been repaid;

(2) the NCUSIF's equity ratio exceeds the normal operating level set by the Board;<sup>11</sup> and (3) the NCUSIF's available assets ratio exceeds 1 percent.<sup>12</sup> Where those circumstances are present, the FCU Act requires the Board to make the maximum possible distribution that does not reduce the NCUSIF's equity ratio below its normal operating level or reduce the NCUSIF's available assets ratio below 1 percent.<sup>13</sup>

Section 741.4 of NCUA's regulations implements these requirements.<sup>14</sup> The Board originally adopted this rule on October 17, 1984.<sup>15</sup> The provisions of § 741.4 have only been slightly modified in the past 33 years since the rule was adopted.<sup>16</sup> However, because the Board is contemplating the possibility of closing the Temporary Corporate Credit Union Stabilization Fund (TCCUSF), a temporary revolving fund created to address problems in the corporate credit union system that arose as part of the Great Recession,<sup>17</sup> and transferring all of its remaining assets to the NCUSIF, the Board has reexamined § 741.4 and believes amendments to the rule are necessary to provide FICUs with greater fairness, transparency, and predictability regarding NCUSIF equity distributions.

The Board specifically proposes to amend § 741.4(e) to adopt a method for calculating a FICU's proportionate share of a declared NCUSIF equity distribution. The Board has historically determined the amount of a FICU's proportionate share based on the FICU's daily NCUSIF capitalization deposit balance. The Board recognizes that this method is not clearly stated in § 741.4(e) or any formal guidance to the credit union industry. Furthermore, the Board has identified flaws in this approach that may give an unfair advantage to FICUs with assets over \$50 million. Accordingly, the Board believes that amending § 741.4(e) is necessary to provide FICUs with greater fairness,

transparency, and predictability regarding this calculation.

The Board also proposes to amend § 741.4(j)(1)(ii) to change its current policy of making an NCUSIF equity distribution to a FICU that terminates federal share insurance coverage during the calendar year applicable to an NCUSIF equity distribution.<sup>18</sup> The Board has historically made such a distribution under these circumstances based on the amount of time during that year that the FICU was federally insured by NCUA. However, the Board believes that amending § 741.4(j)(1)(ii) is necessary to promote greater fairness to FICUs that remain federally insured by NCUA throughout the entire calendar year.

Moreover, the Board proposes to make technical and conforming amendments to §§ 741.4(b) and (i) to accommodate the proposed amendments to §§ 741.4(e) and 741.4(j)(1)(ii) and to eliminate Appendix A to part 741, which provides examples of partial year NCUSIF assessments and distributions under § 741.4, in favor of developing more user-friendly and easily updated examples that can be posted on NCUA's Web site. Finally, the Board proposes to add temporary § 741.13 to address any NCUSIF equity distributions related to the winding down of the Corporate System Resolution Program, a special purpose initiative to stabilize the corporate credit union system funded principally through advances from the TCCUSF. Because the Corporate System Resolution Program involved a series of corporate assessments against FICUs over multiple years and any NCUSIF equity distributions related to that program would likely take place over multiple years and in varying amounts, the Board believes that any NCUSIF equity distributions related to the Corporate System Resolution Program should be addressed in a separate, temporary provision of the rule. For purposes of this temporary provision, any NCUSIF equity distributions declared for calendar years 2017 through 2021 are deemed to be "resulting from the Corporate System Resolution Program."

While not part of the specific amendments proposed in this rulemaking, the Board is also requesting comments on ways to improve the current process for assessing and collecting federal share insurance premiums. The Board is interested in providing FICUs with greater fairness, transparency, and predictability in this

<sup>2</sup> 12 U.S.C. 1783.

<sup>3</sup> *Id.* at 1782(c)(1)(A)(i).

<sup>4</sup> *Id.* at 1782(c)(1)(A)(iii).

<sup>5</sup> *Id.* at 1782(c)(1)(A)(iii)(I).

<sup>6</sup> *Id.* at 1782(c)(1)(A)(iii)(II).

<sup>7</sup> *Id.* at 1782(c)(1)(B)(i). A FICU may terminate federal share insurance coverage by converting to or merging into a nonfederally insured credit union or a noncredit union financial institution such as a mutual savings bank. If permitted under state law, a federally insured, state-chartered credit union may also convert to private share insurance. See 12 CFR 708b (NCUA's regulation governing mergers and conversions to private share insurance). A FICU may also terminate federal share insurance coverage through voluntary or involuntary liquidation.

<sup>8</sup> *Id.* at 1782(c)(2)(A).

<sup>9</sup> *Id.* at 1782(c)(2)(B). The equity ratio is the amount of NCUSIF capitalization, including FICU NCUSIF capitalization deposits and retained earnings of the NCUSIF (net of direct liabilities of the NCUSIF and contingent liabilities for which no provision for losses has been made) divided by the aggregate amount of insured FICU shares. *Id.* at 1782(h)(2).

<sup>10</sup> *Id.* at 1782(c)(2)(C), (D).

<sup>11</sup> The NCUSIF equity ratio's normal operating level is between 1.2 percent and 1.5 percent as specified by the Board. *Id.* at 1782(h)(4). The normal operating level is currently 1.3 percent.

<sup>12</sup> *Id.* at 1782(c)(3)(A)(i)–(iii). The available assets ratio is the total of cash plus market value of unencumbered investments (less direct liabilities and contingent liabilities for which no provision for loss has been made) divided by the aggregate amount of insured FICU shares. *Id.* at 1782(h)(1).

<sup>13</sup> *Id.* at 1782(c)(3)(B)(i)–(ii).

<sup>14</sup> 12 CFR 741.4.

<sup>15</sup> 49 FR 40561 (Oct. 17, 1984).

<sup>16</sup> The most recent substantive amendments addressed how newly chartered FICUs and FICUs that terminate federal share insurance are affected by any NCUSIF premium or deposit replenishment assessments in the same year. See 74 FR 63277 (Dec. 3, 2009).

<sup>17</sup> 12 U.S.C. 1790e.

<sup>18</sup> This includes a FICU that terminates federal share insurance through voluntary or involuntary liquidation.

regard. The Board intends to address the assessment and collection of federal share insurance premiums in a separate rulemaking based, in part, on the comments received. One possible improvement the Board is considering is to calculate federal share insurance premiums as consistently as possible with how the Board proposes to calculate each FICU's proportionate share of an NCUSIF equity distribution.

The Board requests comment on all aspects of this proposed rule on or before Tuesday, September 5, 2017.

## II. Section-by-Section Analysis

### *Section 741.4(e) Distribution of NCUSIF Equity*

The Board proposes to amend § 741.4(e) to adopt a method for calculating a FICU's proportionate share of an NCUSIF equity distribution. NCUA has historically determined the amount of a FICU's proportionate share based on the FICU's daily NCUSIF capitalization deposit balance. Under this method, NCUA determines a FICU's proportionate share of an NCUSIF equity distribution by dividing the total dollar amount of the NCUSIF equity distribution by the total dollar amount of the NCUSIF capitalization deposits. Expressed as a percentage, this quotient represents the distribution (or dividend) rate. NCUA then divides the distribution rate by 365 (the number of calendar days in a year) to arrive at a daily distribution rate. Finally, NCUA applies this dividend rate to a FICU's daily NCUSIF capitalization deposit balance to determine that FICU's proportionate share.<sup>19</sup>

The principal advantage of this method is that it treats an NCUSIF equity distribution similarly to a dividend on an investment such as a share certificate. Each FICU's proportionate share is determined based on its NCUSIF capitalization deposit which the Board invests in interest-bearing government securities and other lawful investments for public funds of the United States to generate revenue for the NCUSIF.<sup>20</sup> However, the Board recognizes that this method may give a FICU with \$50 million or more in assets an unfair advantage over smaller FICUs. NCUA adjusts a smaller FICU's NCUSIF capitalization deposit annually in April using insured shares reported on the December 31 Call Report. As a result, for

the first 3 months of the calendar year applicable to the NCUSIF equity distribution, the daily NCUSIF capitalization deposit balance is based on Call Report data that is almost two years old. Moreover, for the remainder of the calendar year, the daily NCUSIF capitalization deposit balance is based on the previous year's Call Report data. As a result, this method not only fails to capture insured share growth at a smaller FICU during the calendar year, but also fails to capture insured share growth during the previous calendar year for a full 3 months until NCUA adjusts the NCUSIF capitalization deposit in April.

In contrast, this method does capture insured share growth at a larger FICU during the calendar year. NCUA adjusts a larger FICU's NCUSIF capitalization deposit semiannually in April using insured shares reported on the December 31 Call Report and in October using insured shares reported on the June 30 Call Report. This means that for the last 3 months of the calendar year applicable to the NCUSIF equity distribution, the daily NCUSIF capitalization deposit balance is based on current Call Report data. As a result, this method will capture insured share growth at a larger FICU during the calendar year, giving the larger FICU an unfair advantage over smaller FICUs. Recognizing this inherent unfairness, the Board proposes to adopt a new method for calculating a FICU's proportionate share of an NCUSIF equity distribution that is more equitable to smaller FICUs and uses more contemporary share insurance activity.

In determining the appropriate method for calculating a FICU's proportionate share, the Board seeks to develop a method that: (1) Is based on a FICU's insured shares; (2) uses the most current and accurate data readily accessible through a FICU's quarterly Call Reports; (3) NCUA can reasonably administer without additional regulatory burden on FICUs or administrative burden on the agency; and (4) does not give an unfair advantage to one class of FICUs over another.

The Board believes that using a FICU's insured shares (as opposed to total assets or some other measure, such as the total number of FICUs in the NCUSIF system) is appropriate because a FICU's insured share balance directly relates to the operation of the NCUSIF and is a factor in calculating the NCUSIF equity ratio and average assets ratio which trigger an NCUSIF equity distribution. Furthermore, the Board believes that using the most current and

accurate data reasonably available through a FICU's quarterly Call Reports allows NCUA to easily capture the actual proportionate size of each FICU in the NCUSIF system without giving an unfair timing advantage to one class of FICUs over another. The use of Call Report data also avoids additional regulatory burden on FICUs or administrative burden on NCUA.

Consequently, the Board has considered and rejected a number of alternative methods for calculating a FICU's proportionate share, including the use of a FICU's total assets or the total number of FICUs at the end of the calendar year. The use of a FICU's total assets bears no relation to a FICU's insured shares and unfairly advantages larger FICUs that can leverage their size to increase total assets at the expense of smaller FICUs. Likewise, calculating a FICU's proportionate share based on the total number of FICUs in the NCUSIF system has no relationship to an individual FICU's insured shares and would unfairly advantage smaller FICUs at the expense of larger FICUs. Accordingly, the Board has considered and rejected these two approaches, among others.

The Board is considering adopting one of two methods for calculating a FICU's proportionate share of an NCUSIF equity distribution: (1) The average of the four quarter-end insured share balances reported on the FICU's Call Reports during the calendar year applicable to an NCUSIF equity distribution, or (2) insured share balances reported on the FICU's December 31 Call Report during the calendar year applicable to an NCUSIF equity distribution. Of the two methods, the Board believes the four quarter average method has more advantages, such as accounting for seasonal fluctuations, and has therefore proposed corresponding regulatory text for § 741.4 reflecting the four quarter average method in this notice of proposed rulemaking. However, the Board is requesting comment on both methods and will consider adopting one over the other based on the persuasiveness of the comments.

#### Four Quarter Average of Insured Shares Method

As noted above, the Board is considering using the average of eligible FICUs' quarter-end insured share balances as reported on their quarterly Call Reports for the year applicable to the NCUSIF equity distribution.<sup>21</sup>

<sup>21</sup> Under this proposed rule, credit unions that terminate NCUSIF insurance during the year

<sup>19</sup> To address mergers completed during the calendar year applicable to the distribution, the NCUSIF equity distribution due to a merged FICU based on its independent NCUSIF capitalization deposit balance was paid to the continuing credit union.

<sup>20</sup> 12 U.S.C. 1783(c).

Under this proposed method, NCUA would determine a FICU's proportionate share of an NCUSIF equity distribution by dividing the dollar amount of the total NCUSIF equity distribution by the aggregate average dollar amount of insured shares for FICUs eligible for a distribution as reported on each quarter-end Call Report for the calendar year applicable to the distribution. NCUA would then multiply the proportionate share by a FICU's average dollar amount of insured shares. The Board would determine a FICU's average dollar amount of insured shares by adding the dollar amounts of insured shares reported in each of the FICU's quarterly Call Reports for the year applicable to the distribution, and then dividing by four.<sup>22</sup>

The following illustrates the application of the proposed method for calculating a FICU's proportionate share of an NCUSIF equity distribution. Assume the Board declares an NCUSIF equity distribution of \$100 million in the form of a dividend. Also assume that the aggregate average dollar amount of insured shares for FICUs eligible for a distribution for the calendar year is \$100 billion. The proportionate share of \$100 million and \$100 billion is 0.001 or 0.1%. XYZ Credit Union, a fictitious FICU, reports quarterly insured shares of \$10 million, \$12 million, \$11 million, and \$12 million, respectively. As a result, XYZ Credit Union has an average dollar amount of insured shares of \$11.25 million (adding \$10 million, \$12 million, \$11 million, and \$12 million together and dividing by 4 equals \$11.25 million). Multiplying XYZ Credit Union's average dollar amount of insured shares by its proportionate share of the dollar amount of the NCUSIF equity distribution and the aggregate average dollar amount of insured shares for FICUs eligible for a distribution yields a proportionate dividend of \$11,250 (\$11.25 million multiplied by 0.001 equals \$11,250).

The principal advantage of this method for calculating a FICU's proportionate share is that it adjusts for seasonal fluctuations in insured share levels. It also removes any incentive to inflate year-end insured share levels.

applicable to the distribution are not eligible to receive a distribution.

<sup>22</sup> To address the effect of mergers of NCUSIF insured credit unions throughout the calendar year, the Board would combine the dollar amounts of insured shares reported separately by merging FICUs prior to the consummation of any merger with the dollar amounts of insured shares reported separately by the continuing FICU when calculating the continuing FICU's average dollar amount of insured shares. This accounts for the merger as if it were in effect for the entire year given both institutions were NCUSIF insured.

Adjusting for seasonal fluctuations in insured share levels allows NCUA to make a proportionate distribution based on the actual average size of a FICU over the calendar year. In addition, this method for calculating a FICU's proportionate share is based on publicly available information contained in each FICU's quarterly Call Reports. This information is also periodically examined by NCUA and state regulators. Furthermore, this method would not increase regulatory burden on FICUs because they currently report insured shares in their quarterly Call Reports.

However, this method for calculating a FICU's proportionate share poses some disadvantages. First, this method is somewhat more complex than simply using year-end insured share balances. For example, NCUA has to separately track FICUs that merge during the calendar year to combine their insured shares. Consequently, this method could be more administratively burdensome for NCUA. Second, this method does not correspond exactly to the other calculations required by § 741.4(e). In particular, both the NCUSIF equity ratio and the available assets ratio are, by statute, calculated based on the aggregate amount of insured shares in FICUs as of the December 31 Call Report.<sup>23</sup> The Board believes the advantages of this approach to calculating a FICU's proportionate share of an NCUSIF equity distribution outweigh the disadvantages and requests comment on this proposed calculation method. The Board specifically requests comment on whether a longer look-back period, such as 18 to 24 months, is appropriate to more accurately capture the proportionate size of each FICU. The Board may adjust the proposed calendar year look-back period based on the persuasiveness of the comments.

#### Year-End Insured Share Balance Method

Alternatively, the Board is considering using eligible FICUs' year-end insured share balances as the basis for calculating their proportionate share of an NCUSIF equity distribution. Under this method, NCUA would determine a FICU's proportionate share by dividing the dollar amount of an NCUSIF equity distribution by the aggregate amount of insured shares in all FICUs as reported on the December 31 Call Report for the year applicable to the distribution. That proportionate share would then be multiplied by the amount of insured shares reported in the FICU's December 31 Call Report for the year applicable to

the distribution to determine each FICU's proportionate share.

The following illustrates the application of the proposed method for calculating a FICU's proportionate share of an NCUSIF equity distribution. Assume the Board declares an NCUSIF equity distribution of \$100 million in the form of a dividend. Also assume that the aggregate average dollar amount of insured shares for FICUs eligible for a distribution for the calendar year is \$100 billion. The proportionate share of \$100 million and \$100 billion is 0.001 or 0.1%. XYZ Credit Union, a fictitious FICU, reports insured shares of \$11 million on its December 31 Call Report. Multiplying XYZ Credit Union's year-end insured shares for the year applicable to the distribution by the proportionate share of the dollar amount of the NCUSIF equity distribution and the aggregate average dollar amount of insured shares for FICUs eligible for a distribution yields a proportionate NCUSIF equity distribution of \$11,000 (\$11 million multiplied by 0.001 equals \$11,000).

This method for calculating a FICU's proportionate share of an NCUSIF equity distribution has several advantages. First, NCUA would not need to create a special rule regarding mergers because all merger activity for the calendar year would be captured in the continuing FICU's December 31 Call Report. Second, NCUA would not need to create a special rule regarding terminations of federal share insurance because a FICU that terminates federal share insurance coverage during the calendar year would not file a December 31 Call Report. Third, NCUA currently uses this method when calculating: (1) The proportionate share of an NCUSIF equity distribution paid to a financial institution that converts to federal share insurance during the calendar year from private share insurance or through conversion to a credit union from a bank;<sup>24</sup> (2) the NCUSIF equity ratio;<sup>25</sup> (3) the available assets ratio;<sup>26</sup> and (4) the dollar amount of any federal share insurance premiums.<sup>27</sup>

However, this method for calculating a FICU's proportionate share does not account for seasonal fluctuations in share levels. As a result, a FICU that experiences a drop off in the amount of insured shares in the fourth quarter would receive a smaller NCUSIF equity distribution even though that FICU maintained a higher amount of insured shares over the calendar year.

<sup>24</sup> 12 CFR 741.4(i)(1)(v).

<sup>25</sup> 12 U.S.C. 1782(h)(2); 12 CFR 741.4(b).

<sup>26</sup> *Id.* at 1782(h)(1); *Id.* at 741.4(b).

<sup>27</sup> *Id.* at 1782(c)(2)(A); *Id.* at 741.4(d).

<sup>23</sup> 12 U.S.C. 1782(c)(4).

Accordingly, this approach may not accurately reflect the actual proportionate share of each FICU in the NCUSIF system. Furthermore, the Board is concerned that this approach may create an incentive for some FICUs to increase insured shares at the end of the reporting year in an attempt to receive a larger NCUSIF equity distribution. Any such attempts to receive a larger NCUSIF equity distribution could lead to inequities, and in extreme cases, potential safety and soundness issues. Additionally, significant increases in insured shares at year-end would lower the NCUSIF's equity ratio, all else being equal, and potentially lower the amount available for distribution.

The Board requests comment on this proposed calculation method. Particularly, the Board requests comment on how this proposed calculation method could be improved to address the Board's concerns regarding seasonal fluctuations, any attempts to increase a FICU's year-end insured share balance, and any other relevant aspects of this approach.

#### *Section 741.4(j) Conversion From, or Termination of, Federal Share Insurance*

The Board proposes to amend § 741.4(j)(1)(ii) to prohibit NCUSIF equity distributions to FICUs that terminate federal share insurance coverage during the calendar year.<sup>28</sup> Currently, if a FICU terminates federal share insurance coverage during the calendar year that FICU is entitled to receive a NCUSIF equity distribution based on the FICU's insured shares as of the last day of the most recently ended reporting period reduced by the number of months remaining in the calendar year after the FICU terminates coverage.<sup>29</sup>

The Board adopted the current calculation methodology in 2010 to simplify the manner in which an NCUSIF equity distribution is made to a FICU that terminates federal share insurance.<sup>30</sup> The Board reasoned that this simplification was appropriate "particularly since the contribution of a departing credit union to future distributions diminishes with the passage of time."<sup>31</sup> While the Board has

historically attempted to recognize the contribution of a departing credit union, the Board believes that prohibiting NCUSIF equity distributions to FICUs that terminate federal share insurance coverage is a more fair and reasonable approach than the Board's current policy.

The Board favors this approach because it is more equitable to FICUs that remain federally insured by NCUA throughout the calendar year and consistent with the assessment of federal share insurance premiums. A FICU that terminates federal share insurance coverage before the assessment of a premium is not required to pay that premium.<sup>32</sup> Because that FICU is not required to bear the risk of federal share insurance coverage (*i.e.*, an assessment of a federal share insurance premium or an increase in the FICU's required NCUSIF capitalization deposit), the Board believes it would be inherently unfair to FICUs that remain federally insured by NCUA to allow a FICU that terminates coverage to receive the rewards of federal share insurance coverage (*i.e.*, an NCUSIF equity distribution).

The Board also favors this approach because it parallels general corporate practice regarding shareholder equity distributions. A corporate shareholder that sells stock before a distribution is declared generally forfeits the right to an equity distribution from the corporation.<sup>33</sup> This clear, bright-line rule ensures that a corporation is able to ascertain the exact number of individuals who should receive an equity distribution without significant litigation risk from former shareholders or previously unknown claimants. Likewise, adopting a clear, bright-line rule for an NCUSIF equity distribution allows the Board to reasonably ascertain the FICUs to which it must make distributions. Furthermore, this approach allocates the risk of forfeiting an NCUSIF equity distribution directly to the entity in the best position to avoid that risk, namely the FICU terminating federal share insurance coverage. The Board believes that a FICU considering the economic advisability of terminating federal share insurance coverage is in the best position to avoid forfeiting an NCUSIF equity distribution because the

Board publishes quarterly reports on the condition of the NCUSIF that provide ample opportunity to determine whether an NCUSIF equity distribution is likely for that calendar year. Because of this advanced notice, the Board believes that the responsibility should fall on the FICU to make an independent business decision whether the benefits of receiving the NCUSIF equity distribution outweigh the benefits terminating federal share insurance coverage.

While the Board believes that the proposed change to § 741.4(j)(1)(ii) presents a more equitable and reasonable approach for handling NCUSIF equity distributions to a former FICU than the Board's current policy, the Board recognizes that this is not the only available approach. Accordingly, the Board requests comment on this aspect of the proposed rule and may make modifications to this approach depending on the persuasiveness of the comments.

The Board requests specific comments on how to address a FICU that terminates federal share insurance coverage through liquidation. One approach that the Board is considering is to continue to make NCUSIF equity distributions to a liquidated FICU until the closure of its liquidation estate. In other words, the Board would interpret the termination date for federal share insurance coverage to be the date the liquidation estate officially closes. However, the Board recognizes that this approach may be problematic, especially if the liquidation estate remains open for several years, because it could result in the liquidation estate receiving an NCUSIF equity distribution while also imposing costs on the NCUSIF. As a result, the Board is also considering treating the termination date as the date the FICU enters liquidation. Accordingly, the Board requests comment on the appropriate treatment of liquidation estates under proposed § 741.4(j)(1)(ii).

#### *Section 741.13 NCUSIF Equity Distributions Related to the Corporate System Resolution Program*

The Board proposes to adopt a temporary provision to govern any NCUSIF equity distributions resulting from the Corporate System Resolution Program. For purposes of this temporary provision, any NCUSIF equity distributions declared for calendar years 2017 through 2021 are deemed to be "resulting from the Corporate System Resolution Program." The Board created the Corporate System Resolution Program to respond to increased administrative costs resulting from the

<sup>28</sup> *Id.* at 741.4(j)(1)(ii).

<sup>29</sup> The calculation methodology set out in § 741.4(j)(1)(ii) specifically requires the Board to multiply the amount of insured shares outstanding by the "modified premium/distribution ratio." The "modified premium/distribution ratio" is the amount of full months in the calendar year preceding the termination of federal share insurance coverage divided by 12. See 12 CFR 741.4(b).

<sup>30</sup> 74 FR 36618 (July 24, 2009) (proposed rule).

<sup>31</sup> *Id.*

<sup>32</sup> See 12 CFR 741.4(j)(1)(iii) (a FICU that terminates federal share insurance coverage is only required to pay a federal share insurance premium if it is assessed on or before the date of the termination of coverage).

<sup>33</sup> See *e.g.* *Limbaugh v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 732 F.2d 859, 861 (11th Cir. 1984) ("[w]hen stock is sold prior to the ex-dividend date, the right to a dividend goes with the stock to the purchaser, rather than staying with the seller.").

conservatorship and liquidation of corporate credit unions following the Great Recession. As part of the Corporate System Resolution Program, the Board repackaged portfolios of asset-backed securities and corporate bonds (legacy assets) into NCUA Guaranteed Notes (NGNs) and funded the securitization of these assets through corporate assessments and borrowing against a line of credit at the U.S. Treasury.

Improved performance of legacy assets and NCUA's legal recoveries in its capacity as liquidating agent for the corporate credit unions has resulted in the TCCUSF maintaining a net position of positive \$1.6 billion as of March 2017. It is now possible for remaining NGNs to be funded solely from the NCUSIF without inordinate risk, meaning that the purposes of the TCCUSF and the Corporate System Resolution Program have been fulfilled. Accordingly, the Board is considering closing the TCCUSF and winding down the Corporate System Resolution Program and will be publishing a notice in the **Federal Register** soliciting comment in that regard.

Closing the TCCUSF and winding down the Corporate System Resolution Program will require NCUA to transfer all remaining funds, property, or other assets remaining in the TCCUSF to the NCUSIF, which could trigger a significant NCUSIF equity distribution.<sup>34</sup> Winding down of the Corporate System Resolution Program could also trigger future NCUSIF equity distributions as the NGNs mature. Given the potential size and complexity of these transactions, the Board believes that § 741.4 is ill-suited to address these potential NCUSIF equity distributions. As a result, the Board proposes to adopt a temporary provision to NCUA's share insurance requirements rule to govern an NCUSIF equity distribution resulting from the Corporate System Resolution Program.

The Board believes that any NCUSIF equity distribution related to the Corporate System Resolution Program should first go towards repaying those FICUs that paid special premiums, generally referred to as corporate assessments, rather than taking the form of a general proportionate distribution to current FICUs under § 741.4. Accordingly, the Board is considering making any NCUSIF equity distributions related to the Corporate System Resolution Program in the form of a series of NCUSIF equity

distributions repaying any corporate assessments against FICUs on either a first-in, first-out (FIFO) or a last-in, first-out (LIFO) basis.

Any payments paid to a FICU that has merged into another FICU would be paid to the continuing FICU. Moreover, any payments owed to a liquidated FICU with an open liquidation estate or a closed liquidation estate still within its applicable look-back period would be made to the liquidation estate and distributed ratably to the FICU's creditors in accordance with part 709 of NCUA's rules. Given the payment priority set out in part 709, the Board anticipates that a majority of these creditors would be members with uninsured share balances rather than general creditors of the liquidation estate. Because any NCUSIF equity distribution related to the Corporate System Resolution Program would go first towards repaying FICUs that paid corporate assessments, a FICU that has not paid a corporate assessment would not be entitled to receive an NCUSIF equity distribution related to the Corporate System Resolution Program unless all such corporate assessments are first repaid in full. Additionally, a FICU that terminates federal share insurance coverage before the payment date for an NCUSIF equity distribution related to the Corporate System Resolution Program would not be entitled to a distribution for the reasons stated above in the discussion of proposed changes to § 741.4(j)(1)(ii).

#### NCUSIF Equity Distribution on First-In, First-Out Basis

Under a FIFO approach, the Board would make an NCUSIF equity distribution to each FICU up to the total dollar amount of corporate assessments paid by that FICU during the relevant assessment period beginning with the first assessment period in 2009. For example, assume the Board has declared four corporate assessments in the amounts of \$100 million in 2009, \$250 million in 2010, \$550 million in 2011, and \$700 million in 2012. Also assume that XYZ Credit Union, a fictitious FICU, has paid corporate assessments of \$1 million, \$2.5 million, \$5.5 million, and \$7 million, respectively. Furthermore, assume that on June 30, 2018, the Board closes the TCCUSF and declares an NCUSIF equity distribution of \$500 million. Under the proposed FIFO method, XYZ Credit Union would receive \$3.5 million (\$1 million for 2009 plus \$2.5 million for 2010 equals \$3.5 million) representing the total dollar amount of corporate assessments paid by XYZ Credit Union for calendar years 2009 and 2010.

Because there are not enough funds to fully repay the \$550 million corporate assessment for 2011, XYZ Credit Union receives a distribution of remaining funds based on its pro rata share of the corporate assessment (\$5.5 million divided by \$550 million equals .01 or 1 percent). In this case, only \$150 million remains after repaying the first and second corporate assessments (Subtracting \$100 million and \$250 million from \$500 million equals \$150 million, which is less than \$550 million). As a result, XYZ Credit Union receives a distribution for that period of \$1.5 million (\$150 million multiplied by .01 equals \$1.5 million). As a result, XYZ Credit Union receives a total NCUSIF equity distribution of \$5 million (\$3.5 million plus \$1.5 million equals \$5 million) from the \$500 million distribution declared on June 30, 2018.

#### NCUSIF Equity Distribution on Last-In, First-Out Basis

Under a LIFO approach, the Board would make an NCUSIF equity distribution to each FICU up to the total dollar amount of premiums paid by that FICU during the relevant assessment period beginning with the last assessment period. For example, assume the Board has declared four corporate assessments in the amounts of \$100 million in 2009, \$250 million in 2010, \$550 million in 2011, and \$700 million in 2012. Also assume that XYZ Credit Union, a fictitious FICU, has paid corporate assessments of \$1 million, \$2.5 million, \$5.5 million, and \$7 million, respectively. Furthermore, assume that on June 30, 2018, the Board closes the TCCUSF and declares a NCUSIF equity distribution of \$500 million. Because there are not enough funds to fully repay the \$700 million corporate assessment for 2012, XYZ Credit Union receives a distribution based on its pro rata share of the corporate assessment (\$7 million divided by \$700 million equals .01 or 1 percent). As a result, under the proposed LIFO method, XYZ Credit Union would receive \$5 million (\$500 million multiplied by .01 equals \$5 million).

Of the two methods, the Board favors the LIFO method because it ensures that FICUs receive NCUSIF equity distributions for their most recent corporate assessments first, with smaller assessments that took place at the start of the Corporate System Resolution Program being repaid over time as the NGNs mature. Therefore, the Board is proposing corresponding regulatory text for § 741.13 reflecting the LIFO approach in this notice of proposed rulemaking. However, the Board is

<sup>34</sup> 12 U.S.C. 1790e(h). NCUA does not have the legal authority to make distributions directly from the TCCUSF.

requesting comment on both methods, as well as whether the four quarter average of insured shares method or the year-end insured share balance method discussed above should apply to NCUSIF equity distributions relating to the Corporate System Resolution Program.

Additionally, the Board requests comment on whether the FCU Act permits the FIFO and LIFO methods. The FCU Act requires the Board to “effect a pro rata distribution to insured credit unions after each calendar year if, as of the end of the calendar year,” the NCUSIF’s equity ratio exceeds its normal operating level and the available assets ratio exceeds 1 percent.<sup>35</sup> The Board believes that the statutory text is sufficiently ambiguous to permit the Board to adopt either a FIFO or LIFO method for determining the payment priority of each series of NCUSIF equity distributions provided that each FICU receives a pro rata distribution based on the amount of funds available for the relevant assessment period. However, the Board recognizes that this is not the only interpretation of this provision and requests comment in that regard.

Furthermore, the Board requests comment on whether a FICU’s liquidation estate should receive an NCUSIF equity distribution related to the Corporate System Resolution Program. The Board’s preferred approach is to make NCUSIF equity distributions to liquidation estates that remain open or were recently closed and are still within the relevant look-back period where it is possible to reopen the estate and make additional distributions to creditors. As noted above in the discussion of § 741.4(j)(1)(ii), however, the treatment of liquidation estates can be problematic, especially for liquidation estates that remain open for several years. Accordingly, the Board requests comment on the appropriate treatment of liquidation estates under proposed § 741.13.

### III. Technical and Conforming Amendments

#### *Section 741.4(b) Definitions*

The Board proposes to make a technical correction to the definition of the “available assets ratio.” Section 741.4(b) defines the “available assets ratio” as the ratio of the total of cash plus market value of unencumbered investments less direct liabilities and contingent liabilities for which no provision for loss has been made (numerator) to the aggregate amount of

insured shares in all FICUs (denominator).<sup>36</sup> The mathematical formula immediately following this definition, however, compares the numerator to the “aggregate amount of all insured shares from the final reporting period of the calendar year.”<sup>37</sup> This discrepancy is a prior inadvertent drafting error that the Board proposes to fix by amending the qualifier to read “as reported on the calendar year-end Call Report” in both the definition and the mathematical formula.

This proposed change is purely technical in nature and does not change the legal effect of § 741.4. The available assets ratio is used to determine whether the Board is required to make an NCUSIF equity distribution for a given calendar year.<sup>38</sup> When making that determination, the FCU Act requires NCUA to calculate the aggregate amount of insured shares in all FICUs using information from December 31 Call Reports.<sup>39</sup> This requirement is also codified in § 741.4(e) which generally addresses an NCUSIF equity distribution.<sup>40</sup> Accordingly, both the written definition in § 741.4(b) and the mathematical formula are correct. However, the Board recognizes that, if uncorrected, the discrepancy in language could cause some confusion. Therefore, amending the definition of “available assets ratio” is appropriate to provide FICUs with greater clarity.

#### *Section 741.4(i) Conversion to Federal Insurance*

The Board proposes to make conforming amendments to §§ 741.4(i)(1)(v) and 741.4(i)(2)(iii) depending on the method chosen for calculating a FICU’s proportionate share of an NCUSIF equity distribution. Section 741.4(i)(1)(v) addresses an NCUSIF equity distribution to a financial institution that converts to federal share insurance coverage during the calendar year.<sup>41</sup> If there is an NCUSIF equity distribution applicable to the calendar year in which a financial institution converts to federal share insurance, the newly insured credit union is entitled to receive an NCUSIF equity distribution based on the amount of insured shares as of the end of the calendar year multiplied by the financial institution’s premium/distribution ratio. The premium/

distribution ratio is calculated by dividing the number of full remaining months in the calendar year following the date of the financial institution’s conversion to federal share insurance by 12.<sup>42</sup>

Section 741.4(i)(2)(iii) addresses an NCUSIF equity distribution to a FICU that merges with a financial institution that is not federally insured by NCUA where the FICU is the surviving entity.<sup>43</sup> If the Board declares a NCUSIF equity distribution for the calendar year in which such a merger takes place, the continuing FICU is entitled to receive an NCUSIF equity distribution based on its insured shares as of the end of the year of the merger. Depending on the method chosen to calculate a FICU’s proportionate share of an NCUSIF equity distribution, the Board will make one of the following conforming amendments to §§ 741.4(i)(1)(v) and 741.4(i)(2)(iii).

#### Four Quarter Average of Insured Shares

If the Board chooses to calculate a FICU’s proportionate share of an NCUSIF equity distribution based on a FICU’s average insured shares, the Board would amend §§ 741.4(i)(1)(v) and 741.4(i)(2)(iii) by removing the calculation methods set out in those paragraphs and replacing them with cross-references to amended § 741.4(e). Amended § 741.4(e) would include a provision stating that a financial institution converting to federal share insurance during the calendar year applicable to an NCUSIF equity distribution would be treated as not having any insured shares for the quarterly periods that it is not federally insured by NCUA. The Board would apply the same approach to mergers where the merging institution is not federally insured by NCUA. While this method is different from NCUA’s current practice, the difference is mathematically insignificant and promotes greater uniformity throughout § 741.4 by harmonizing the calculation methods under §§ 741.4(e) and 741.4(i).

#### Year-end Insured Share Balance

If the Board chooses to calculate a FICU’s proportionate share of an NCUSIF equity distribution based on a FICU’s year-end insured shares, the Board would not amend §§ 741.4(i)(1)(v) or 741.4(i)(2)(iii) because the rule presently calculates a converting financial institution’s proportionate share of an NCUSIF equity distribution using year end insured shares reported in the December 31 Call Report times

<sup>36</sup> 12 CFR 741.4(b).

<sup>37</sup> *Id.*

<sup>38</sup> 12 U.S.C. 1782(c)(3)(A)(iii).

<sup>39</sup> 12 U.S.C. 1782(c)(3)(C).

<sup>40</sup> 12 CFR 741.4(e).

<sup>41</sup> 12 CFR 741.4(i)(1)(v).

<sup>42</sup> *Id.* at 741.4(b).

<sup>43</sup> 12 CFR 741.4(i)(2)(iii).

<sup>35</sup> 12 U.S.C. 1782(c)(3)(A).

the institution's premium/distribution ratio, which adjusts the FICU's share of the distribution for the proportion of the year it was federally insured by NCUA.

Appendix A to Part 741 Examples of Partial-Year NCUSIF Assessment and Distribution Calculations under § 741.4

The Board also proposes to remove Appendix A to part 741 and replace it with examples and frequently asked questions published on NCUA's public Web site.<sup>44</sup> Appendix A provides examples of partial-year NCUSIF assessment and distribution calculations under various different factual scenarios. While the Board recognizes that examples of how NCUA makes these calculations may be useful to FICUs, including those examples in an appendix to part 741 makes it difficult for NCUA to update, amend, or revise the examples to provide FICUs with additional clarity. Accordingly, the Board believes that removing Appendix A and replacing it with information on the Web site is appropriate to provide FICUs with more clear, relevant, and timely examples regarding the calculation of partial-year NCUSIF assessments and distributions.

IV. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities (primarily those under \$100 million in assets).<sup>45</sup> This rule clarifies existing requirements and will not impose any new regulatory requirements. Consequently, the rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates a new information collection requirement or amends an existing information collection requirement.<sup>46</sup> For the purposes of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or third-party disclosure requirement. The proposed rule does not contain a new information collection requirement or amend an existing information collection requirement that requires approval by OMB under the Paperwork Reduction Act (44 U.S.C. Chap. 35).

Assessment of Federal Regulations and Policies on Families

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.<sup>47</sup>

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests.<sup>48</sup> 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 rule will 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. NCUA has therefore determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

List of Subjects

12 CFR Part 741

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

By the National Credit Union Administration Board on July 20, 2017.

Gerard Poliquin,

Secretary of the Board.

For the reasons discussed above, the Board proposes to amend 12 CFR part 741 as follows:

PART 741—REQUIREMENTS FOR INSURANCE

■ 1. 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.

■ 2. Amend § 741.4 by:

■ a. In paragraph (b) revising the definition of “Available assets ratio;”

■ b. Revising paragraph (e);

■ c. Revising paragraphs (i)(1)(v) and (i)(2)(iii) and (j)(1)(ii).

The revisions to read as follows:

§ 741.4 Insurance premium and one percent deposit.

\* \* \* \* \*

(b) \* \* \*

Available assets ratio means the ratio of:

(i) The amount determined by subtracting all liabilities of the NCUSIF, including contingent liabilities for which no provision for losses have been made, from the sum of cash and the market value of unencumbered investments authorized under section 203 of the Federal Credit Union Act (12 U.S.C. 1783(c)), to:

(ii) The aggregate amount of the insured shares in all insured credit unions as reported on the calendar year-end Call Report.

(iii) Shown as an abbreviated mathematical formula, the available assets ratio is:

(cash + market value of unencumbered investments) - (liabilities + contingent liabilities for which no provision for loss has been made)
-----
aggregate amount of the insured shares in all insured credit unions as reported on the calendar year-end Call Report.

\* \* \* \* \*

(e) NCUSIF equity distribution. If, at the end of the calendar year, the

NCUSIF's equity ratio exceeds its normal operating level and its available

<sup>44</sup> 12 CFR 741, App. A.

<sup>45</sup> 5 U.S.C. 603(a).

<sup>46</sup> 44 U.S.C. 3507(d); 5 CFR 1320.

<sup>47</sup> Public Law 105–277, 654, 112 Stat. 2681, 2681–581 (1998).

<sup>48</sup> 64 FR 43255 (Aug. 4, 1999).



assets ratio exceeds 1 percent, the NCUA Board will make a proportionate NCUSIF equity distribution to federally insured credit unions. Newly chartered federally insured credit unions and credit unions that convert from or terminate federal share insurance during the calendar year for which the NCUSIF equity distribution is declared shall not be eligible for that distribution.

(1) *Amount of NCUSIF equity distribution.* A NCUSIF equity distribution shall be the maximum amount possible that does not reduce the NCUSIF's equity ratio below its normal operating level or the available assets ratio below 1 percent.

(2) *Form of NCUSIF equity distribution.* A NCUSIF equity distribution shall be in a form determined by the NCUA Board including a waiver of insurance premiums, a rebate of insurance premiums, dividends, or any combination thereof.

(3) *Timing of NCUSIF equity distribution.* A NCUSIF equity distribution shall occur within a reasonable time after the close of the calendar year for which the NCUSIF equity distribution is declared but no later than June 30th.

(4) *Calculation of ratios and proportionate NCUSIF equity distribution.* For purposes of this paragraph, the NCUA Board shall determine the equity ratio, available assets ratio, and a federally insured credit union's proportionate NCUSIF equity distribution as follows:

(i) *Equity ratio and available assets ratio.* When calculating the equity ratio and available assets ratio, the aggregate amount of insured shares in all federally insured credit unions shall be determined based on the insured shares reported on the calendar year-end Call Report for which the NCUSIF equity distribution is declared.

(ii) *Proportionate NCUSIF equity distribution.* A federally insured credit union's proportionate NCUSIF equity distribution shall be determined by dividing the dollar amount of the declared NCUSIF equity distribution by the aggregate average amount of insured shares in all federally insured credit unions eligible to receive the distribution and then multiplying by a federally insured credit union's average amount of insured shares over the calendar year for which the NCUSIF equity distribution is declared.

(A) *Average amount of insured shares.* An eligible federally insured

credit union's average amount of insured shares over a given calendar year shall be determined by dividing the sum of the insured shares reported in each of its quarterly Call Reports (including the separate Call Reports of any credit unions that have merged into the federally insured credit union) by 4. A financial institution that converts to federal share insurance or merges into a federally insured credit union during the calendar year will be treated as not having insured shares for periods where it was not federally insured by NCUA.

(B) *Aggregate average amount of insured shares.* The aggregate average amount of insured shares over a given calendar year shall be determined by adding together the aggregate amount of insured shares in all federally insured credit unions (less any insured shares reported in any quarterly Call Report by a credit union that converts from or terminated federal share insurance during the calendar year for which the NCUSIF equity distribution is declared).

(C) *Mathematical formulas.* Shown as an abbreviated series of mathematical formulas, a federally insured credit union's proportionate NCUSIF equity distribution is calculated as follows:

$$Prop. Dist. _i = \left( \frac{NCUSIF \text{ equity distribution}}{Aggregate \text{ avg. amount of insured shares}} \right) * Avg. \text{ amount of insured shares}_i$$

$$Aggregate \text{ average amount of insured shares} = \sum_{i=1}^N (Avg. \text{ amount of insured shares}_i)$$

$$Avg. \text{ amount of insured shares}_i = \sum_{q=1}^4 \left( \frac{insured \text{ shares}_{q,i}}{4} \right)$$

Where:

*i* = the *i*th federally insured credit union in the series.

*N* = the total number of all federally insured credit unions as of December 31 of the calendar year for which the NCUSIF equity distribution is declared.

*n* = the *n*th federally insured credit union in the series.

*q* = the *q*th quarterly Call Report in the series.

\* \* \* \* \*

(i) *Conversion to federal insurance.*

(1) \* \* \*

(v) If the NCUSIF declares a distribution in the year following conversion based on the NCUSIF's equity at the end of the year of conversion, receive a distribution according to paragraph (e) of this section. With regard to distributions declared in the calendar year of conversion but based on the NCUSIF's equity from the end of the preceding

year, the converting institution will receive no distribution.

(2) \* \* \*

(iii) If the NCUSIF declares a distribution in the year following the merger, receive a distribution according to paragraph (e) of this section. With regard to distributions declared in the calendar year of the merger but based on the NCUSIF's equity from the end of the preceding year, the continuing credit

union will receive a distribution based on its average insured shares as of the end of the preceding year.

(j) *Conversion from, or termination of, Federal share insurance.*

(1) \* \* \*

(ii) Forfeit any distribution of NCUSIF equity for the calendar year in which the conversion or merger is completed; and

\* \* \* \* \*

■ 3. Remove Appendix A to part 741 and redesignate Appendix B and Appendix C as Appendix A and Appendix B, respectively.

■ 4. Effective until December 31, 2022, add § 741.13 to read as follows:

**§ 741.13 NCUSIF equity distributions related to Corporate System Resolution Program.**

(a) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) *Assessment* means a special premium assessed by the Board as part of the Corporate System Resolution Program.

(2) *Assessment period* means the relevant calendar year, or portion of a calendar year, for which the Board has charged an assessment.

(3) *Available assets ratio* has the same meaning as used in § 741.4 of this chapter.

(4) *Corporate credit union* has the same meaning as used in § 704.2 of this chapter.

(5) *Corporate System Resolution Program* refers to a special program established by the NCUA Board to stabilize the corporate credit union system.

(6) *Board* means the NCUA Board.

(7) *Federally insured credit union* means a credit union that remains federally insured under Title II of the Federal Credit Union Act as of the end of the calendar year applicable to an NCUSIF equity distribution. This includes an open liquidation estate for a liquidated credit union that would have been considered a federally insured credit union but for its liquidation. A closed liquidation estate is considered an open liquidation estate for purposes of this section if the liquidation estate is still within any applicable look back period.

(8) *National Credit Union Share Insurance Fund* or *NCUSIF* refers to a revolving fund established by Congress within the U.S. Treasury to provide federal share insurance coverage to federally insured credit union members and to offset NCUA's administrative expenses associated with the conservatorship and liquidation of federally insured credit unions.

(9) *NCUSIF equity distribution* means the payment of funds from the NCUSIF pursuant to § 202 of the Federal Credit Union Act (12 U.S.C. 1782).

(10) *NCUSIF equity ratio* has the same meaning as used in § 741.4 of this chapter.

(11) *Normal operating level* has the same meaning as used in § 741.4 of this chapter.

(b) *NCUSIF equity distributions related to Corporate System Resolution Program.* Notwithstanding § 741.4 of this chapter, the following procedures shall apply to any NCUSIF equity distribution related to the Corporate System Resolution Program declared for calendar years 2017 through 2021:

(1) *Amount of NCUSIF equity distribution.* An NCUSIF equity distribution related to the Corporate System Resolution Program shall be the maximum amount possible that does not reduce the NCUSIF equity ratio below its normal operating level or the NCUSIF's available assets ratio below 1 percent.

(2) *Timing of NCUSIF equity distribution.* An NCUSIF equity distribution related to the Corporate System Resolution Program shall occur within a reasonable time after funds become available for distribution.

(3) *Form of NCUSIF equity distribution.* An NCUSIF equity distribution related to the Corporate System Resolution Program shall take the form of a rebate of assessments. If all assessments for all assessment periods have been repaid to all federally insured credit unions, an NCUSIF equity distribution may take any form as prescribed in § 741.4 of this chapter.

(4) *Payment of NCUSIF equity distribution.* Beginning with the last assessment period, an NCUSIF equity distribution related to the Corporate System Resolution Program shall be paid to all federally insured credit unions up to the total dollar amount paid by that federally insured credit union for that assessment period subject to the following:

(i) *Insufficient funds.* If the total dollar amount of an NCUSIF equity distribution related to the Corporate System Resolution Program is insufficient to repay all federally insured credit unions the total dollar amount paid by that federally insured credit union for that assessment period, each federally insured credit union shall receive a proportionate share of the NCUSIF equity distribution based on the percentage of the total assessment for the assessment period attributable to that federally insured credit union. Any subsequent NCUSIF equity distribution shall be calculated in the same manner

until all assessments for the relevant assessment period have been repaid.

(ii) *Excess funds.* If the total dollar amount of an NCUSIF equity distribution related to the Corporate System Resolution Program exceeds the total dollar amount necessary to repay all assessments for all remaining assessment periods, each federally insured credit union shall receive a proportionate share of the NCUSIF equity distribution, after all remaining assessments have been paid, according to § 741.4 of this chapter.

(c) *Effective date.* This provision shall expire and no longer be applicable after December 31, 2022.

[FR Doc. 2017-15687 Filed 7-31-17; 8:45 am]

BILLING CODE 7535-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

Docket No. FAA-2017-0646; Airspace  
Docket No. 17-AGL-17

#### Proposed Establishment of Class E Airspace; Ellendale, ND

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to establish Class E airspace at Ellendale, ND. Controlled airspace is necessary to accommodate new special Instrument Approach Procedures developed at Ellendale Municipal Airport, for the safety and management of instrument flight rules (IFR) operations at the airport.

**DATES:** Comments must be received on or before September 15, 2017.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-9826, or (800) 647-5527. You must identify FAA Docket No. FAA-2017-0646; Airspace Docket No. 17-AGL-17, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11A, Airspace Designations and Reporting Points, and