

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

#### Prevailing Rate Systems

#### CFR Correction

In Title 5 of the Code of Federal Regulations, Parts 1 to 699, revised as of January 1, 2017, on page 464, in Part 532, Subpart B, Appendix C, under MINNESOTA, Minneapolis-St. Paul, *Area of Application. Survey area plus*., Minnesota.; the first occurrence of “Freeborn” is replaced with “Fillmore”.

[FR Doc. 2017–13805 Filed 6–29–17; 8:45 am]

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## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 709

#### RIN 3133–AE41

#### Safe Harbor

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

**ACTION:** Final rule.

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

**DATES:** The effective date for this rule is July 31, 2017.

**FOR FURTHER INFORMATION CONTACT:** John Nilles, Senior Capital Markets Specialist, Office of Examination and Insurance, at (703) 518–1174; or John H. Brolin, Senior Staff Attorney, Office of General Counsel, at (703) 518–6438; National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In 2000, when it adopted a regulation codified at 12 CFR 709.10,<sup>1</sup> the Board clarified the scope of its statutory authority as conservator or liquidating agent to disaffirm or repudiate contracts of an FICU with respect to transfers of financial assets by a FICU in connection with a securitization or participation. Current § 709.10 provides that a conservator or liquidating agent will not use its statutory authority to disaffirm or repudiate contracts to reclaim, recover, or recharacterize as property of a FICU or the liquidation estate any financial assets transferred by the FICU in connection with a securitization or in the form of a participation, provided that such transfer meets all conditions for sale accounting treatment under generally accepted accounting principles (“GAAP”).<sup>2</sup> Current § 709.10 also provides a “safe harbor” by confirming “legal isolation” if all other standards for off balance sheet accounting treatment, along with some additional conditions focusing on the enforceability of the transaction, were met by the transfer in connection with a securitization or a participation. Satisfaction of “legal isolation” is vital to securitization transactions because of the risk that the pool of financial assets

<sup>1</sup> 65 FR 55442 (Sept. 14, 2000).

<sup>2</sup> In the Proposal, NCUA stated that the agency had not previously stated that federal credit unions (“FCUs”) have the authority to issue asset-backed securities (“ABS”) and that its understanding was that no FCU had done so. NCUA also does not believe that any federally insured, state-chartered credit unions (“FISCU”) have issued ABS. Therefore, the securitization aspect of the 2000 Rule has not been applied. In connection with this final rule updating the 2000 Rule, the Office of General Counsel recently published a legal opinion letter on NCUA’s Web site, which finds that the securitization of assets is a power incidental to the operation of FCUs. Accordingly, if an FCU (or a FISCU if permitted by state law) issues ABS, these amendments to § 709.10 are necessary to preserve the safe harbor for investors.

transferred into the securitization trust could be recovered in bankruptcy or in a credit union liquidation. Generally, to satisfy the legal isolation condition, the transferred financial assets must have been presumptively placed beyond the reach of the transferor, its creditors, a bankruptcy trustee, or in the case of a FICU, NCUA as conservator or liquidating agent. Thus, current § 709.10 addresses only purported sales which meet the conditions for off balance sheet accounting treatment under GAAP. The implementation of accounting rules since 2000, however, has created uncertainty for loan participation and potential securitization participants.

##### A. Modifications to GAAP Accounting Standards

In 2009, the Financial Accounting Standards Board (“FASB”) finalized modifications to GAAP through Statement of Financial Accounting Standards No. 166, (now codified in FASB Accounting Standards Codification (ASC) Topic 860, Transfers and Servicing) and Statement of Financial Accounting Standards No. 167 (now codified in FASB ASC Topic 810, Consolidation) (together, the “2009 GAAP Modifications”). The 2009 GAAP Modifications made changes that affect whether a special purpose entity (“SPE”) must be consolidated for financial reporting purposes, thereby subjecting many SPEs to GAAP consolidation requirements. These accounting changes could require a FICU to consolidate an issuing entity to which financial assets have been transferred for securitization on to its balance sheet for financial reporting purposes primarily because an affiliate of the FICU retains control over the financial assets. Given the 2009 GAAP Modifications, legal and accounting treatment of a transaction may no longer be aligned. As a result, the safe harbor provision of the 2000 Rule may not apply to a transfer in connection with a securitization that does not qualify for off balance sheet accounting treatment.

FASB ASC Topic 860 also affects the treatment of participation interests transferred by a FICU, in that it defines participating interests as pari-passu, pro-rata interests in financial assets, and subjects the sale of a participation interest to the same conditions as the sale of financial assets. FASB ASC Topic 860 provides that transfers of