

**7535-01-U**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 713**

**RIN 3133-AD98**

**Fidelity Bond and Insurance Coverage**

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

**ACTION:** Final Rule.

**SUMMARY:** The NCUA Board (Board) is adopting as a final rule, without change, the interim final rule that the Board issued in May 2012 that amended NCUA's fidelity bond rule.<sup>1</sup> The interim final rule removed references in the fidelity bond rule to NCUA's former Regulatory Flexibility Program (RegFlex), which granted a RegFlex credit union broader authority to choose the deductible amount of its fidelity bond policy.<sup>2</sup>

Specifically, the interim final rule amended the standard used for granting authority to a federal credit union (FCU) to choose an increased deductible amount. Before the Board

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<sup>1</sup> 77 FR 31981 (May 31, 2012).

<sup>2</sup> The Board established RegFlex in 2002. 66 FR 58656 (Nov. 23, 2001). RegFlex relieved FCUs from certain regulatory restrictions and granted them additional powers if they demonstrated sustained superior performance as measured by CAMEL rating and net worth classification.

issued the interim final rule, the standard was based on an FCU's assets and status as a RegFlex FCU. The standard used after the interim final rule is based on an FCU's assets, CAMEL ratings, and capital level. The new standard is also used by NCUA in other rules affected by the elimination of RegFlex.

**DATES:** This final rule is effective immediately under the same terms issued in the interim final rule published at 77 FR 31981 (May 31, 2012).

**FOR FURTHER INFORMATION CONTACT:** Frank Kressman, Associate General Counsel, Office of General Counsel, at the above address or telephone: (703) 518-6540.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

**II. Comments**

**III. Regulatory Procedures**

**I. Background**

**What Did the Interim Final Rule Change and Why is NCUA Adopting This Final Rule?**

In issuing a proposed rule in 2011 to remove part 742 from NCUA's regulations and eliminate the RegFlex Program,<sup>3</sup> NCUA inadvertently overlooked references to RegFlex in its fidelity bond rule.<sup>4</sup> At that time, the fidelity bond rule established a formula for calculating the maximum deductible an FCU could carry on its fidelity bond based partly on the FCU's asset size. The rule set a cap of \$200,000, but permitted RegFlex FCUs with assets in excess of \$1 million a higher maximum deductible of up to \$1 million.<sup>5</sup> With the issuance of the final rule to eliminate RegFlex, the NCUA Board also issued an interim final rule to amend the fidelity bond rule.<sup>6</sup>

The interim final rule changed the regulatory standard for permitting an FCU to have an increased deductible on its fidelity bond. As noted, the standard used before the interim final rule was that a RegFlex FCU with assets in excess of \$1 million had such authority. The standard used after the interim final rule is that such authority is granted to an FCU with assets in excess of \$1 million that is, among other things, well capitalized.<sup>7</sup> Specifically, the interim final rule permits an FCU to choose a maximum deductible amount for its fidelity bond coverage of \$1 million if the FCU has: (1) received a composite CAMEL rating of "1" or "2" during its last two full examinations and (2) maintained a "well capitalized" net worth classification for the immediately preceding six quarters or has remained "well capitalized" for the immediately preceding six quarters after applying the applicable risk-based net worth requirement.

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<sup>3</sup> 76 FR 81421 (Dec. 28, 2011).

<sup>4</sup> 12 CFR §713.6.

<sup>5</sup> 12 CFR §713.6(a)(1), (c).

<sup>6</sup> 77 FR 31981 (May 31, 2012).

<sup>7</sup> See 70 FR 61713 (Oct. 26, 2005) for a broader perspective of the regulatory history of Part 713.

Once a year, an FCU meeting the interim final rule's well capitalized standard must review its continued eligibility for a higher deductible under the rule, which is the same approach applied by the Board when it adopted the fidelity bond provisions in 2005.<sup>8</sup> An FCU's continued eligibility will be based on its asset size as reflected in its most recent year-end 5300 call report and its net worth as reflected in that same report. If an FCU that previously qualified for the higher deductible limit has a decrease in assets based on its most recent year-end 5300 call report or its net worth has decreased so that it would no longer qualify under the well capitalized standard in the fidelity bond rule, then it must obtain the coverage otherwise required by Part 713 with an appropriate deductible. A similar result occurs if an FCU meets the assets threshold and its net worth continues to qualify it under the well capitalized standard, but it has failed to receive a CAMEL rating of "1" or "2" during its most recent examination report.

## **II. Comments**

NCUA received no written responses to its request for comment on the interim final rule.<sup>9</sup> Accordingly, the NCUA Board adopts as final, without change, the interim final rule published in May 2012.<sup>10</sup>

## **III. Regulatory Procedures**

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<sup>8</sup> Id. at 61714.

<sup>9</sup> 77 FR 31981 (May 31, 2012).

<sup>10</sup> Id.

### Regulatory Flexibility Act

NCUA must prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under ten million dollars in assets). The final rule reframes a standard for FCUs in complying with the fidelity bond deductible requirements. NCUA has determined this rule will not have a significant economic impact on a substantial number of small credit unions.

### Paperwork Reduction Act

NCUA has determined that this rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

### Executive Order 13132

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

The Treasury and General Government Appropriations Act, 1999 - - Assessment of  
Federal Regulations and Policies on Families

NCUA has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

When NCUA issues a final rule, as defined in Section 551 of the Administrative Procedure Act, it triggers a reporting requirement for congressional review of agency rules under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121 (SBREFA). The Office of Management and Budget has determined that this rule is not a major rule for purposes of SBREFA.

**List of Subjects**

**12 CFR Part 713**

Credit unions, Insurance, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 6, 2012.

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Mary Rupp

Secretary of the Board

For the reasons discussed above, the National Credit Union Administration adopts as final, without change, the interim final rule published at 77 FR 31981 (May 31, 2012).