



## BOARD ACTION MEMORANDUM

**TO:** NCUA Board

**DATE:** January 22, 2020

**FROM:** Office of Examination and Insurance; Office of General Counsel

**SUBJ:** Notice of Proposed Rulemaking – Subordinated Debt

**ACTION REQUESTED:** The NCUA Board’s approval to issue the attached proposed rule, which amends the NCUA’s rules in 12 CFR parts 701, 702, 709, and 741. Most significant to this proposal is the addition of a new subpart in part 702 – Subpart D – Subordinated Debt, Grandfathered Secondary Capital, and Regulatory Capital.

**DATE ACTION REQUESTED:** January 23, 2020.

**BUDGET IMPACT, IF ANY:** Based on the volume and complexity of the additional work associated with this proposed rule, staff estimates the need for two additional legal staff at the CU-15 level with specialized expertise. In addition, the agency would need to retain outside counsel to bolster internal resources and expertise. The estimated annual cost for these resources is approximately \$1 million. The additional resources are necessary to maintain adequate staff with the requisite expertise to handle matters relating to securities law, subordinated debt disclosures, and asset securitization undertaken by credit unions.

**SUBMITTED TO INSPECTOR GENERAL FOR REVIEW:** Yes.

**RESPONSIBLE STAFF MEMBER:** Larry Fazio, Director, Office of Examination and Insurance; Tom Fay, Manager, Capital Markets, Office of Examination and Insurance; Julie Decker, Risk Officer, Office of Examination and Insurance; Justin M. Anderson, Senior Staff Attorney, Office of General Counsel.

### SUMMARY:

The attached proposed rule would amend various parts of the NCUA’s regulations to permit low-income designated credit unions (LICUs), Complex Credit Unions, and New Credit Unions to issue Subordinated Debt for purposes of Regulatory Capital treatment. Specifically, this proposed rule would create a new subpart in the NCUA’s final risk-based capital (RBC) rule<sup>1</sup> that would address the requirements for and Regulatory Capital treatment of Subordinated Debt.

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<sup>1</sup> On December 12, 2019 the NCUA Board approved a final rule to delay the effective date of a final RBC rule until January 1, 2022.



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## National Credit Union Administration

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This new subpart would, among other things, contain requirements related to applying for authority to issue Subordinated Debt, credit union eligibility to issue Subordinated Debt, prepayments, disclosures, securities laws, and the terms of a Subordinated Debt Note. All secondary capital issued after the effective date of a final Subordinated Debt rule would be subject to the requirements for Subordinated Debt. This change would not impact a LICU's ability to include such instruments in its Net Worth.

This proposal would also grandfather any secondary capital issued before the effective date of a final Subordinated Debt rule (Grandfathered Secondary Capital), and preserve such secondary capital's Regulatory Capital treatment for 20 years after the effective date of a final Subordinated Debt rule. Grandfathered Secondary Capital, under this proposal, would generally remain subject to the requirements in current §§ 701.34(b) through (d) (Current Secondary Capital Rule). For ease of reference, the requirements in the Current Secondary Capital Rule would be moved from their current location to a section in the new proposed subpart.

In addition to the above-mentioned changes, the proposed rule also makes various additions and amendments to other parts and sections of the NCUA's regulations. Specifically, the proposed rule would include: a new section addressing limits on loans to other credit unions; an expansion of the borrowing rule to clarify that federal credit unions can borrow from any source; revisions to the final RBC Rule and the payout priorities in an involuntary liquidation rule to account for Subordinated Debt and Grandfathered Secondary Capital; and cohering changes to part 741 to account for the other changes proposed in this rule that apply to federally insured, state-chartered credit unions.

**RECOMMENDED ACTION:** The NCUA Board approve the attached proposed rule for publication in the *Federal Register* for a 120-day period.

**ATTACHMENT:** Proposed Rule.