



**BOARD ACTION MEMORANDUM**

**TO:** NCUA Board

**DATE:** March 8, 2022

**FROM:** Office of General Counsel

**SUBJ:** Subordinated Debt – Final Rule

**ACTION REQUESTED:** The NCUA Board’s approval of a final rule to amend the Subordinated Debt rule.

**DATE ACTION REQUESTED:** March 16, 2023.

**OTHER OFFICES CONSULTED:** Office of Examination and Insurance.

**VIEWS OF OTHER OFFICES CONSULTED:** Concur.

**BUDGET IMPACT, IF ANY:** None.

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

**RESPONSIBLE STAFF MEMBER:** Justin M. Anderson, Senior Staff Attorney, Office of General Counsel and Tom Fay, Manager, Capital Markets, Office of Examination and Insurance.

**SUMMARY:** The final rule makes two changes to the current Subordinated Debt rule (Current Rule) related to the maturity of Subordinated Debt Notes (Notes) and Grandfathered Secondary Capital (GSC). Specifically, this rule replaces the maximum maturity of Notes with a requirement that any credit union seeking to issue Notes with maturities longer than 20 years demonstrate how such instruments would continue to be considered “debt.” This final rule also extends the Regulatory Capital treatment of GSC to the later of 30 years from the date of issuance or January 1, 2052. The final rule also makes four minor modifications to the Current Rule to make it more user-friendly and flexible. Specifically, the final rule amends the definition of “Qualified Counsel” to clarify that such person(s) is not required to be licensed to practice law in every jurisdiction that may relate to an issuance. The final rule also amends two sections of the Current Rule to remove the “statement of cash flow” from the Pro Forma Financial Statements requirement and replace it with a requirement for “cash flow projections.” Next, the final rule revises the section of the Current Rule on filing requirements and inspection of documents. Finally, the final rule removes a parenthetical reference related to GSC that no longer counts as Regulatory Capital.

**RECOMMENDED ACTION:** The NCUA Board approve the attached final rule.



---

National Credit Union Administration

---

**ATTACHMENT:** Final rule.