

National Credit Union Administration  
**SUPPORTING STATEMENT**

**Investment and Deposit Activities, 12 CFR Part 703**  
**OMB No. 3133-0133**

**Summary of Proposed Rule Action:**

The NCUA is proposing to amend the NCUA's derivatives rule in Subpart B to part 703. This proposal is intended to modernize the NCUA's derivatives rule and make it more principles-based. This proposal retains key safety and soundness components, while providing more flexibility for federal credit unions (FCUs) to manage their interest rate risk (IRR) through the use of derivatives. The changes included in this proposal would streamline the regulation and expand credit unions' authority to engage in derivatives for the purpose of managing IRR.

The NCUA anticipates more FCUs to engage in derivatives, which would increase the recordkeeping requirement associated with reports made to the FCU board and senior executive officers under §703.105. This would increase the number of respondents from 20 to 50. The proposed rule would also increase the number of FCUs that would be required to maintain the policies and procedures annually under §703.106(c) from 43 to 50 respondents. These policies and procedures would also include the process and responsibility framework requirements of external service providers, eliminating separate recordkeeping requirement of §703.107(a)(3). Section 703.108(a) provides for FCUs the meet certain requirements to provide notification of its readiness to engage in derivatives in lieu of an application. The annual increase is estimated in the number of FCUs that would engage in derivatives from 4 to 15. The NCUA does not anticipate any increase in the number of FCUs currently providing applications under proposed §703.108(b) annually. Information collection requirements previously identified under §§703.112 through 703.114 are being removed due to obsolete reporting. Burden under these sections had previously been reported as zero hours. It is estimated that program changes to the information collection requirements associated with this proposed rule increase the burden by 254 hours.

**A. JUSTIFICATION**

**1. Circumstances that make the collection of information necessary.**

Subpart A

The Federal Credit Union Act (Act) provides FCUs with the authority to invest in certain securities, obligations, and accounts (12 U.S.C. 1757(7) and (15)). The National Credit

Union Administration (NCUA) Board has regulations in place to enforce Sections 107(7), 107(8), and 107(15) of the Federal Credit Union Act, 12 U.S.C. 1757(7), 1757(8), 1757(15), which list those securities, deposits, and other obligations in which a Federal Credit Union (FCU) may invest. The regulations related to these areas are contained in Part 703 and Section 721.3 (Incidental Powers) of NCUA's Rules and Regulations.

### Subpart B

Before finalization of the current derivatives rule, FCUs could only use derivatives to hedge real estate loans produced for sale on the secondary market; hedge interest rate lock or forward sales commitments for loans that the FCU originated; or fund dividend payments on member share certificates where the share certificate rate was tied to an equity index.

The scope of the 2014 final rule was intentionally prescriptive, given most FCUs' lack of experience using derivatives for IRR management and the NCUA's need to increase its specialized expertise to manage and supervise the use of such instruments and the accompanying application process included in the rule. The prescriptiveness of the final rule enabled the Board to safely expand derivatives authority while also ensuring that FCUs which engaged in derivatives did not pose an undue safety and soundness risk to themselves, the broader credit union industry, or the National Credit Union Share Insurance Fund (the Fund). As such, the 2014 final rule included a number of restrictions on derivative authorities. These included, but were not limited to, discrete limits on the types of derivative products an FCU could purchase; requiring FCUs to receive NCUA preapproval before engaging in derivatives; and regulatory limits on the amounts of derivatives an FCU could hold relative to its net worth.

Given the observable safe and effective management of derivatives by credit unions since the 2014 final rule, the Board modernize the derivatives rule to expand the derivatives authority for FCUs and shift the regulation toward a more principles-based approach. NCUA remains committed to the principle that any authorized derivative activity should be limited to the purpose of mitigating IRR within a discreet hedging strategy, and may not be used to increase risks deliberately or conduct any otherwise speculative transactions. The rule continues to authorize derivative activity by FCUs that demonstrate risk characteristics highly correlated to the FCU's assets and liabilities, such that derivatives would be an efficient and effective risk mitigation tool.

The Rule addresses permissible derivatives and characteristics, limits on derivatives, operational requirements, counterparty and margining requirements, and the procedures a credit union must follow to request derivatives authority.

**2. Purpose and use of the information collection.**

NCUA uses this information to ensure compliance under 12 U.S.C. 1757a of the Federal Credit Union and NCUA's Rules and Regulations. Additionally, the information is used to limit and monitor the level of risk that exists within a credit union, the actions taken by the credit union to mitigate such risk, and helps prevent losses to FCUs and the National Credit Union Share Insurance Fund (NCUSIF).

Credit unions use this information to engage in a sound derivative program. Credit unions use the information to engage in a sound derivatives program as a tool to mitigate interest rate risk and to evidence compliance with the Rule and safety and soundness requirements.

**3. Use of information technology.**

Credit unions may submit and retain the information collections in several ways, including electronically.

**4. Duplication of information.**

The rule requires credit unions engaging in derivatives activities to obtain an annual financial statement audit performed by a certified public accountant. Section 715.5(a) of NCUA's Regulations already requires FCUs with assets of \$500 million or greater to obtain an annual financial statement audit. 12 CFR. 715.5(a). However, FCUs that already obtain an annual financial statement audit under section 715.5(a) may use that audit to satisfy the requirement of the rule, thereby eliminating duplication. Otherwise, the information collections are unique to each credit union and are not duplicated elsewhere.

**5. Effects to reduce burden on small entities.**

This collection does not have a significant impact on a substantial number of small credit unions.

**6. Consequences of not conducting the collection.**

The information collection requirements are necessary to allow the NCUA to supervise federal credit unions for compliance with the Federal Credit Union Act (FCU Act) and serves to protect the federal credit union from risk exposure and promotes a safe and sound credit union system.

**7. Inconsistencies with guidelines in 5 CFR 1320.5(d)(2).**

FCUs are required to retain investment purchase information for each investment transaction for as long as it holds the investment and until the documentation has been audited in accordance with §715.4 and examined by NCUA.

**8. Efforts to consult with persons outside the agency.**

A Paperwork Reduction Act (PRA) notice was published in the preamble of the proposed rulemaking on October 29, 2020, at 85 FR 68487, providing an opportunity for the public to comment on the information collection requirements prescribed by this rule. Comments will be summarized and addressed in the PRA submission associated with the final rulemaking.

**9. Payment or gifts to respondents.**

No payment or gift is given in conjunction with this collection.

**10. Assurance of confidentiality.**

There is no assurance of confidentiality other than that provided by law.

**11. Questions of a sensitive nature.**

No questions of a sensitive nature are asked. The information collection does not collect any Personally Identifiable Information (PII).

**12. Burden of information collection.**

Line Item	12 CFR	Information Collection	Type of Burden	# Respondents	# Responses Per Respondent	# Annual Responses	Hours Per Response	Total Annual Reporting Burden
<b>Subpart A - General Investment and Deposit Activities</b>								
1	703.3	Investment policies. A FCU's board of directors must establish written investment policies consistent with the Act, ....	Record-keeping	5	1	5	0.50	3
2	703.4(b)	Recordkeeping and documentation requirements. (b) A FCU must maintain documentation for each investment transaction for as long as it holds the investment and until the documentation has been audited in accordance with § 715.4 of this chapter and examined by NCUA.	Record-keeping	3,350	20	67,000	0.25	16,750
3	703.4(c)	(c) A FCU must maintain documentation its board of directors used to approve a broker-dealer or a safekeeper for as long as the broker-dealer or safekeeper is approved and until the documentation has been audited in accordance with § 715.4 of this chapter and examined by NCUA.	Record-keeping	300	2	600	0.50	300
4	703.4(d)	(d) A FCU must obtain an individual confirmation statement from each broker-dealer for each investment purchased or sold.	Record-keeping	3,350	20	67,000	0.25	16,750
5	703.5(b)(2)	Discretionary control over investments and investment advisers. (2) At least annually, the FCU must adjust the amount of funds held under discretionary control to comply with the 100 % of net worth cap. The FCU's board of directors must receive notice as soon as possible, but no later than the next regularly scheduled board meeting, of the amount exceeding the net worth cap and notify in writing NCUA within 5 days after the board meeting.	Reporting	50	1	50	2.00	100
6	703.6	Credit analysis. A FCU must conduct and document a credit analysis on an investment and the issuing entity before purchasing it, except for investments issued or fully guaranteed as to principal and interest by the U.S. government or its agencies, enterprises, or corporations or fully insured (including accumulated interest) by the NCUA or the FDIC. A FCU must update this analysis at least annually for as long as it holds the investment.	Record-keeping	850	10	8,500	0.50	4,250
7	703.7	Notice of non-compliance investments. The FCU must notify in writing the appropriate regional director of an investment that has failed a requirement of this part within 5 days after the board meeting.	Reporting	5	0	0	0.00	0.00
8	703.9(a)	Safekeeping of investments. (a) A FCU's purchased investments and repurchase collateral must be in the FCU's possession, recorded as owned by the FC union through the FRB-Entry System, or held by a board-approved safekeeper under a written custodial agreement that requires the safekeeper to exercise, at least, ordinary care.	Record-keeping	2,000	1	2,000	0.25	500
9	703.10(a)	Monitoring non-security investments. (a) At least quarterly, a FCU must prepare a written report listing all of its shares and deposits in banks, credit unions, and other depository institutions.	Record-keeping	2,600	4	10,400	0.50	5,200
10	721.3(b)(2)(iv)	Annually review charitable donation account policy. (iv) Account documentation and other written requirements. The parties to the CDA, typically the funding credit union and trustee or other manager of the account, must document the terms and conditions controlling the account in a written agreement. The terms of the agreement must be consistent with this section. Your board of directors must adopt written policies governing the creation, funding, and management of a CDA that are consistent with this section, must review the policies annually, and may amend them from time to time.	Record-keeping	100	1	100	0.50	50
11	703.12(a)	Monitoring securities. (a) At least monthly, a FCU must prepare a written report setting forth, for each security held, the fair value and dollar change since the prior month-end, with summary information for the entire portfolio.	Record-keeping	1,200	12	14,400	0.50	7,200
12	703.12(b)	(b) At least quarterly, a FCU must prepare a written report setting forth the sum of the fair values of all fixed and variable rate securities held.	Record-keeping	1200	4	4,800	0.50	2,400

	12 CFR	Information Collection	Type of Burden	# Respondents	# Responses Per Respondent	# Annual Responses	Hours Per Response	Total Annual Reporting Burden
13	703.13(c)(2)	Permissible investment activities. (c) Investment repurchase transaction. A FCU may enter into a investment repurchase transaction so long as: (2) The FCU has entered into a signed contracts with all approved counterparties.	Record-keeping	5	1	10	0.50	5
14	703.13(e)(1) and (4); (f)(2)	(e) <i>Securities lending transaction</i> . A FCU may enter into a securities lending transaction so long as: (1) The FCU receives written confirmation of the loan; (4) The FCU has executed a written loan and security agreement with the borrower.  (f)(1) Trading securities. (2) A FCU must record any security it purchases or sells for trading purposes at fair value on the trade date.	Record-keeping	5	1	10	0.00	0
15	703.13(f)(3)	(3) At least monthly, the FCU must give its board of directors or investment-related committee a written report listing all purchase and sale transactions of trading securities and the resulting gain or loss on an individual basis.	Record-keeping	5	5	25	0.25	6
16	703.14(e)	Permissible investments. (e) Municipal security. A FCU may purchase and hold a municipal security only if it conducts and documents an analysis that reasonably concludes the security is at least investment grade.	Record-keeping	50	5	250	0.50	125.00
17	703.14(j)(1)	(j) Commercial mortgage related security (CMRS). A FCU may purchase a CMRS provided: (1) The FCU conducts and documents a credit analysis that reasonably concludes the CMRS is at least investment grade.	Record-keeping	10	2	20	0.50	10
18	703.19(b)	Investment pilot program. (b) Before a FCU may engage in additional activities it must obtain written approval from NCUA. To obtain approval, a FCU must submit a request to its regional director.	Reporting	1	0	0	0.00	0
19	703.19(c)	(c) A third-party seeking approval of an investment pilot program must submit a request to the Director of the Office of Capital Markets and Planning.	Reporting	1	0	0	0.00	0
20	702.20(b)	(b) Written request. A FCU desiring additional authority above the prescribed limits must submit a written request to the NCUA regional office.	Reporting	5	1	5	3.00	15
21	702.20(d)	(d) Appeal to NCUA Board. A FCU may request the regional director to reconsider any part of the determination made under paragraph (c) of this section and/or file an appeal with the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.	Reporting	Burden covered under 3133-0198				0
TOTAL – Subpart A				3,350	,	175,175	,	53,664

12 CFR	Information Collection	Type of Burden	# Respondents	# Responses Per Respondent	# Annual Responses	Hours Per Response	Total Annual Reporting Burden	Previously Approved	Due to Adjustment	Due to Program Change	
<b>Subpart B - Derivatives</b>											
1	703.104(a)	Have an executed Master Services Agreement with a Domestic Counterparty.	Record keeping	5	2	10	0.50	5	0	5	0
3	703.106(a)(1)	Before entering into the initial Derivative transaction, a FCU board member must receive training that provides a general understanding of the Derivative transactions.	Record keeping	15	0.67	10.05	1.00	10.05	17.42	-7.37	0
4	703.106(b)(1)	Transaction review. Before executing any transaction, a FCU must identify and document the circumstances that lead to the decision to execute a transaction.	Record keeping	50	4	200	0.50	100	13	87	0
5	703.106(b)(2)	A FCU must have an internal controls review.	Record keeping	15	1	15	1.00	15	0	15	0
6	703.106(b)(3)	Financial statement audit. Any FCU engaging in derivatives transactions pursuant to this subpart must obtain an annual financial statement audit.	Record keeping	50	1	50	1.00	50	0	50	0
7	703.106(b)(4)	Collateral management review. Before executing its first Derivative transaction, the FCU must establish a collateral management process that monitors the FCU's collateral and margining requirements.	Record keeping	15	1	15	0.50	7.5	21.5	-14	0
8	703.105(b)(5)	The FCU must establish a liquidity review process and establish effective controls for liquidity exposures arising from both market or product liquidity and instrument cash flows.	Record keeping	15	1	15	0.50	7.5	0	7.5	0
9		Duplicate of 703.106(b)(1)		0	0	0	0.00	0	13	-13	0
10	703.105(a)	Board reporting. At least quarterly, a Federal credit union's Senior Executive Officers must deliver a comprehensive Derivatives report, as described in paragraph (c) of this section to the Federal credit union's board of directors.	Record keeping	50	4	200	0.50	100	0	40	60
11	703.105(b)	At least monthly, FCU staff must deliver a comprehensive Derivatives report to the FCU's Senior Executive Officers and, if applicable, the FCU's asset liability or similarly functioning committee.	Record keeping	50	12	600	0.50	300	0	120	180
12	703.106(c)	A FCU using derivatives must operate according to comprehensive written policies and procedures for control, measurement, and management of derivative transactions. A FCU's board of directors must review the policies and procedures at least annually and update them when necessary.	Record keeping	50	1	50	0.50	25	22	0	3
13		Document uses in its process and responsibility framework prescribed in 703.106(c) - above. (no additional burden)	Record keeping	0	0	0	0	0	1.2	0	-1.2
14	703.108(a) [741.219(b)*]	A FCU must notify the applicable Field Director in writing before it begins engaging in Derivatives for interest rate risk mitigation purposes.	Reporting	15	1	15	1	15	4	0	11
15	703.108(b)	Application – A FCU that does not meet the requirements of 703.108 (a) must obtain approval from its applicable Field Director by providing a statement that includes the proposed strategies, product characteristics and projected maturity terms of Derivative transactions.	Reporting	4	1	4	50.00	200	200	0	0
16	703.108(b)(2)	A FCU may not enter into any Derivative transactions under this subpart until it receives approval from the applicable Field Director. At a field director's discretion, a federal credit union may reapply under this subsection.	Reporting	4	1	4	0.25	1	1	0	0



12 CFR		Information Collection	Type of Burden	# Respondents	# Responses Per Respondent	# Annual Responses	Hours Per Response	Total Annual Reporting Burden	Previously Approved	Due to Adjustment	Due to Program Change
17	703.108(b)(3)	A FCU that receives a denial of its application may appeal such decision in accordance with Part 746 of the NCUA's regulations.	Reporting	Burden covered under 3133-0198				0			
18	703.109(a)(2)	A FCU that no longer meets the requirements of this subpart or, if applicable, fails to comply with its approved application, must provide NCUA with notification once the FCU is back in compliance with this subpart or, if applicable, its approved application.	Reporting	1	1	1	1	1	0	0	1
19	703.109(c)	A FCU that receives written notice of a regulatory violation or a notice of prohibition under this section may appeal such determination in accordance with Part 746 of the NCUA's regulations.	Reporting	Burden covered under 3133-0198				0			
20	741.219(b)	*Any credit union which is insured pursuant to title II of the Act must notify the applicable NCUA Regional Director in writing before it begins engaging in derivatives. <i>[covers the requires under 703.108(a)]</i>	Reporting	4	1	4	0.5	2	2	0	0
<b>TOTALS Subpart B</b>				50	23.861	1,193.05	0.70328	839	295.12	290.13	253.80

	Total Annual Response	Total Annual Burden
Subpart A	175,175	53,664
Subpart B	1,194	839
<b>Total Burden Part 703</b>	<b>176,368</b>	<b>54,503</b>

Based on the labor rate of \$35 per hour, the total cost to respondents is \$1,907,605.

**13. Capital start-up or on-going operation and maintenance costs.**

There are no capital start-up or maintenance costs.

**14. Costs to Federal Government.**

Most items are reviewed by an NCUA examiner as part of the normal examination process. However, additional costs for Subpart A and B is estimated at \$283,444.

**15. Changes in Burden.**

The NCUA anticipates more FCUs to engage in derivatives, which would increase the recordkeeping requirement associated with reports made to the FCU board and senior executive officers under §703.105. This would increase the number of respondents from 20 to 50. The proposed rule would also increase the number of FCUs that would be required to maintain the policies and procedures annually under §703.106(c) from 43 to 50 respondents. These policies and procedures would also include the process and responsibility framework requirements of external service providers, eliminating separate recordkeeping requirement of §703.107(a)(3). Section 703.108(a) provides for FCUs the meet certain requirements to provide notification of its readiness to engage in derivatives in lieu of an application. An increase is estimated in the number of FCUs that would engage in derivatives from 4 to 15. The NCUA does not anticipate any increase in the number of FCUs currently providing applications under proposed §703.108(b) annually. Information collection requirements previously identified under §§703.112 through 703.114 are being removed due to obsolete reporting. Burden under these sections had previously been reported as zero hours. It is estimated that program changes to the information collection requirements associated with this proposed rule increase the burden by 254 hours.

Adjustments to the information collection burden is also being made at to include information collection requirements not previously captured and to update respondents and response times to reflect a more accurate and up-to-date accounting of the burden. Adjustments to the information collection requirements will increase the burden by 290 hours.

**16. Information Collection Planned for Statistical Purposes.**

The information collection is not used for statistical purposes.

**17. Approval to Omit OMB Expiration Date.**

There are no traditional forms associated with this information collection requirement. The OMB control number and expiration date associated with this PRA submission will be displayed on the Federal government's electronic PRA docket at [www.reginfo.gov](http://www.reginfo.gov).

**18. Exceptions to Certification for Paperwork Reduction Act Submissions.**

This collection complies with the requirements in 5 CFR 1320.9.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not involve statistical methods.