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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 2 CFR Part 1880

RIN 2700-AD81

#### Commercial Acquisition; Extension of Suspension and Debarment Exclusions, Grants and Cooperative Agreements

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** NASA has adopted as final, with no change, a proposed rule to extend coverage of non-procurement suspension and debarment to all tiers of procurement and non-procurement actions under all grants and cooperative agreements. The revisions herein are part of NASA's retrospective plan under EO 13563 completed in August 2011. NASA's full plan can be accessed at: [http://www.nasa.gov/pdf/581545main\\_Final%20Plan%20for%20Retrospective%20Analysis%20of%20Existing%20Regulations.pdf](http://www.nasa.gov/pdf/581545main_Final%20Plan%20for%20Retrospective%20Analysis%20of%20Existing%20Regulations.pdf).

**DATES:** *Effective Date:* March 29, 2013.

**FOR FURTHER INFORMATION CONTACT:** Leigh Pomponio, NASA, Office of Procurement, Contract Management Division (Suite 5G84); (202) 358-0592; email: [leigh.pomponio@nasa.gov](mailto:leigh.pomponio@nasa.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On August 31, 2005 (70 FR 51865), the Office of Management and Budget promulgated guidelines to Federal agencies on the governmentwide debarment and suspension system for nonprocurement programs. The OMB guidance to Federal Agencies was amended on November 15, 2006 (71 FRN 664320). These two notices resulted in the governmentwide regulation at 2 CFR part 180. Specifically, at § 180.220(c), OMB

offered Federal agencies flow down options for application of nonprocurement suspension and debarment regulations to procurement actions under covered transactions. OMB permitted Agencies to flow down requirements to just the first-tier or to all lower-tier participants.

On April 20, 2007, NASA promulgated a final rule (72 FR 19783) which established a new Part 1880 in Title 2 of the Code of Federal Regulations (CFR) on nonprocurement debarment and suspension. This rule implemented and supplemented the Office of Management and Budget's (OMB) guidance provided at 2 CFR part 180. It included agency-specific regulations related to nonprocurement suspension and debarment. At the time of that action, NASA elected to limit the flow down of nonprocurement suspension and debarment applicability to only first-tier procurement contacts thereunder. However, NASA has since reconsidered its position on flow down and this final rule revises 2 CFR 1880.220 to apply to all participants at all tiers, and to procurement and non-procurement actions at any dollar amount, under Agency grants and cooperative agreements. NASA will not permit any subawards to individuals or entities that are listed on the Excluded Parties List Service (EPLS).

To extend the suspension and debarment exclusions, NASA published a proposed rule on October 29, 2012. The due date for public comments in response to the proposed rule was December 28, 2012. NASA did not receive any comments.

##### B. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866. This rule is not a major rule under 5 U.S.C. 804.

##### C. Regulatory Flexibility Act

NASA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Small entities are already required to check the Excluded Parties List System (EPLS) prior to making first-tier, procurement subawards under a grant or cooperative agreement. They will now be required to ensure that none of their potential subrecipients are on the EPLS. The EPLS is an easy-to-access and easy-to-use on-line resource.

##### D. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) is not applicable because the changes do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

##### List of Subjects in 2 CFR Part 1880

Government procurement; Federal Grant program.

**Ronald A. Poussard,**

*Acting Assistant Administrator for Procurement.*

Accordingly, 2 CFR part 1880 is amended as follows:

#### PART 1880—NONPROCUREMENT DEBARMENT AND SUSPENSION

■ 1. The authority citation for part 1880 continues to read as follows:

**Authority:** Sec. 2455, Pub. L. 103-355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 42 U.S.C. 2473(c)(1). 2

■ 2. Section 1880.220 is revised to read as follows:

#### § 1880.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

NASA extends coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement action, to all lower tier subcontracts, at all dollar values, consistent with OMB guidance at 2 CFR 180.220(c) and the figure in the appendix at 2 CFR part 180. NASA does not permit subcontracting to suspended

or debarred entities at any tier, at any dollar amount.

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## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 703

RIN 3133-AE06

#### Investment and Deposit Activities

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

**ACTION:** Final rule.

**SUMMARY:** The NCUA Board (Board) is amending its investment regulation to allow federal credit unions (FCUs) to purchase Treasury Inflation Protected Securities (TIPS). This final rule adds TIPS to the list of permissible investments for FCUs in part 703. TIPS will provide FCUs with an additional investment portfolio risk management tool that can be useful in an inflationary economic environment.

**DATES:** The final rule is effective on March 29, 2013.

**FOR FURTHER INFORMATION CONTACT:** John H. Brolin, Staff Attorney, or Frank Kressman, Associate General Counsel, Office of General Counsel, at 1775 Duke Street, Alexandria, VA 22314 or telephone: (703) 518-6438; or J. Owen Cole, Jr., Director, Division of Capital Markets, Office of Examination and Insurance, at the above address or telephone: (703) 518-6360.

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. September 2012 Proposal
- III. Final Rule
- IV. Regulatory Procedures

#### I. Background

TIPS are securities issued by the U.S. Department of the Treasury, Bureau of Public Debt, and are readily available to investors. TIPS differ from other securities by providing protection against inflation. The principal amount of TIPS increases with inflation and decreases with deflation, as measured by the Bureau of Labor Statistic's Consumer Price Index (CPI). When TIPS mature, holders are paid the adjusted principal or original principal, whichever is greater. TIPS pay interest twice a year at a fixed rate. The rate is applied to the adjusted principal, so, like the principal, interest payments rise with inflation and fall with deflation. In a deflationary period, it is possible to experience a contractual decline in the

principal balance, which is not an event of default.<sup>1</sup>

TIPS are currently a prohibited investment under part 703 because they reprice their value in response to changes in the CPI, and the CPI is a prohibited index for variable rate instruments. Under § 703.14(a), an FCU is permitted to invest in a variable rate instrument as long as the rate is tied to a domestic interest rate.<sup>2</sup> The purpose of this provision is to reduce the basis risk between the interest earned on assets and the dividends paid on shares.<sup>3</sup> Generally, deposit/share rates for financial institutions, including credit unions, are responsive to market interest rates. As market rates change, so do the deposit/share rates. Thus, if an FCU invests in a variable rate instrument with an index tied to market rates, the spread between the asset's income stream and the share dividends paid should remain relatively constant. This protects the FCU's earnings in times of rate volatility, especially in periods of rising rates. However, there is not always a perfect correlation between market interest rates and deposit/share rates. This can result in greater volatility for an FCU if it does not take action to manage this basis risk.

#### II. September 2012 Proposal

##### A. Summary of the September 2012 Proposal

The Board issued a proposed rule in September 2012 to amend § 703.14(a) to add TIPS to the list of permissible investments for FCUs in part 703.<sup>4</sup> The Board issued the proposal after research and analysis demonstrated that TIPS would be a valuable risk management tool for FCUs. In addition to analyzing the nature and performance of TIPS in the marketplace, NCUA also monitored FCU usage of TIPS through a long-term investment pilot program. The results of the pilot program are consistent with the Board's research demonstrating that TIPS are an appropriate investment for

<sup>1</sup> To learn more about TIPS, see the U.S. Department of the Treasury, Bureau of Public Debt Web site at: [http://www.treasurydirect.gov/indiv/research/indepth/tips/res\\_tips.htm](http://www.treasurydirect.gov/indiv/research/indepth/tips/res_tips.htm).

<sup>2</sup> 12 CFR 703.14(a) states that an FCU may invest in a variable rate investment, as long as the index is tied to domestic interest rates and not, for example, to foreign currencies, foreign interest rates, or domestic or foreign commodity prices, equity prices, or inflation rates. For purposes of part 703, the U.S. dollar-denominated London Interbank Offered Rate (LIBOR) is a domestic interest rate.

<sup>3</sup> Basis risk is a common form of risk incurred by financial institutions, including credit unions. Basis risk is the variability between two or more indices (e.g., equity barometers such as the S&P 500 and interest rate indices such as the 1 year Treasury rate) that serve as benchmarks for valuing financial institution assets and liabilities.

<sup>4</sup> 77 FR 59144 (Sept. 26, 2012).

FCUs and can be a valuable portfolio management tool when there are inflationary risks in the economy.

##### B. Summary of Comments on the September 2012 Proposal

The NCUA received eight comment letters on the September 2012 proposal: two from FCU trade associations and six from state credit union leagues. The Board has considered these comments in adopting this final rule.

All of the commenters agreed that the authority to invest in TIPS will help FCUs manage inflation risk. Several commenters noted that TIPS are guaranteed by the U.S. Government, and the benefits to TIPS investors are widely recognized. One state credit union league noted that certain state-chartered institutions already have the authority to invest in TIPS, which they argued demonstrates that such securities can be utilized safely. Moreover, several commenters noted that FCUs now have greater access to advanced asset-liability management tools that can help identify and measure basis risk.

In addition to supporting the proposal, several commenters also made other recommendations that were outside the scope of the proposal. In general, the commenters asked the Board to take additional steps in the future to provide increased flexibility and additional investment powers to FCUs. Several commenters also urged NCUA to work closely with state regulators to facilitate the ability of well-managed state credit unions to invest in TIPS, where permissible under state law.

#### III. Final Rule

##### A. Why is the board adopting this rule?

As discussed, the Board is adopting this final rule to provide FCUs with an additional investment portfolio risk management tool that can be useful in an inflationary economic environment.

Historically, the Board has prohibited FCUs from investing in variable rate instruments tied to non-domestic rate indices, such as TIPS, because of the basis risk for FCUs. The Board remains concerned about basis risk. However, the Board generally agrees with commenters who noted that FCUs now have greater access to advanced asset-liability management tools that can identify and measure basis risk, and are, therefore, better equipped to manage the risks associated with investing in TIPS. Moreover, the Board agrees with commenters that allowing FCUs to hold TIPS in their investment portfolios adds no credit risk and allows them the option of minimizing the need for