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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

RIN 3133-AE77

Requirements for Insurance; National Credit Union Share Insurance Fund Equity Distributions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is adopting amendments to its share insurance requirements rule to provide stakeholders with greater transparency regarding the calculation of each eligible financial institution's pro rata share of a declared equity distribution from the National Credit Union Share Insurance Fund (NCUSIF). The Board is also adopting a temporary provision to govern all NCUSIF equity distributions related to the Corporate System Resolution Program (CSRP), a special purpose program established by the Board to stabilize the corporate credit union system following the

2007-2009 financial crisis. Furthermore, the Board is making technical and conforming amendments to other aspects of the share insurance requirements rule to account for these changes.

DATES: This rule is effective [**30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Benjamin M. Litchfield, Staff Attorney, Office of General Counsel, at (703) 518-6540; or Steve Farrar, Supervisory Financial Analyst, Office of Examination and Insurance, at (703) 518-6360. You may also contact them at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

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I. Background

The NCUA is the chartering and supervisory authority for federal credit unions (FCUs) and the federal supervisory authority for federally insured credit unions (FICUs).¹ In addition to its chartering and supervisory responsibilities, the Board also administers the NCUSIF, a revolving fund within the U.S. Treasury that provides federal share insurance coverage to more than 106 million credit union members for member accounts held at FICUs and provides assistance in connection with the liquidation or threatened liquidation of FICUs in troubled condition.²

The Federal Credit Union Act (FCU Act) requires each FICU to pay and maintain a capitalization deposit with the NCUSIF equal to one percent of the FICU's insured shares to capitalize the NCUSIF.³ The amount of the FICU's required capitalization deposit is adjusted annually for a FICU with less than \$50 million in assets and semiannually for a FICU with \$50 million in assets or more.⁴ A FICU that terminates federal share

¹ The NCUA's authority to charter federal credit unions is contained in Title I of the FCU Act (12 U.S.C. 1752 – 1775), and its various authorities as federal share insurer are contained in Title II of the FCU Act (12 U.S.C. 1781 – 1790e). Title III of the FCU Act (12 U.S.C. 1795 – 1795k) governs the Board's responsibilities overseeing the NCUA Central Liquidity Facility, a federal instrumentality that provides liquidity for member credit unions.

² 12 U.S.C. 1783.

³ *Id.* at 1782(c)(1)(A)(i).

⁴ *Id.* at 1782(c)(1)(A)(iii)(I)-(II) (“The amount of each insured credit union's deposit shall be adjusted as follows, in accordance with procedures determined by the Board, to reflect changes in the credit union's

insurance coverage is entitled to have its capitalization deposit returned within a reasonable time.⁵

The FCU Act also requires each FICU to pay a federal share insurance premium equal to a percentage of the FICU's insured shares to ensure that the NCUSIF has sufficient reserves to pay potential share insurance claims by credit union members and to provide assistance in connection with the liquidation or threatened liquidation of FICUs in troubled condition.⁶ The Board may assess a federal share insurance premium no more than twice in a calendar year and not in an amount more than necessary to restore the NCUSIF's equity ratio to 1.3 percent.⁷

Furthermore, the FCU Act requires the Board to make a pro rata distribution of NCUSIF equity to FICUs "after each calendar year if, as of the end of the calendar year," there are no outstanding loans or interest owed to the U.S. Treasury and the NCUSIF meets certain

insured shares: (I) annually, in the case of an insured credit union with total assets of not more than \$50,000,000; and (II) semi-annually, in the case of an insured credit union with total assets of \$50,000,000 or more." Because the statutory text can be read to require the Board to adjust the capitalization deposit of a FICU with exactly \$50,000,000 in assets both annually and semi-annually, the Board interprets the phrase "not more than" to mean "less than" to give full effect to Congress' intended meaning of this phrase. *See Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982) (if the meaning of the statutory provision is clear from its text, the sole responsibility of a federal agency is to enforce the statute according to its terms unless literal application of the statute "will produce a result demonstrably at odds with the intention of its drafters.").

⁵ *Id.* at 1782(c)(1)(B)(i). A FICU may terminate federal share insurance coverage by converting to, or merging into, a non-federally insured credit union or a non-credit union financial institution such as a mutual savings bank. If permitted under applicable state law, a federally insured, state-chartered credit union may also convert to private share insurance. *See* 12 CFR 708b (NCUA's regulation governing mergers and conversions to private share insurance). A FICU may also terminate federal share insurance coverage through voluntary or involuntary liquidation.

⁶ *Id.* at 1782(c)(2)(A).

⁷ *Id.* at 1782(c)(2)(B). The "equity ratio" is the amount of NCUSIF capitalization, including FICU NCUSIF capitalization deposits and retained earnings of the NCUSIF (net of direct liabilities of the NCUSIF and contingent liabilities for which no provision for losses has been made) divided by the aggregate amount of insured FICU shares. *Id.* at 1782(h)(2).

financial performance benchmarks.⁸ When those financial conditions are present, the FCU Act requires the Board to make the maximum possible equity distribution that does not reduce the NCUSIF's equity ratio below its normal operating level or the available assets ratio below one percent.⁹

Section 741.4 of the NCUA's share insurance requirements rule implements these requirements.¹⁰ The Board originally adopted it on October 17, 1984 following the passage of the Deficit Reduction Act of 1984,¹¹ which amended the FCU Act to require pro rata distributions of NCUSIF equity under certain financial conditions.¹² The Board subsequently amended § 741.4 following the passage of the Credit Union Membership Access Act of 1998¹³ and the Helping Families Save Their Homes Act of 2009¹⁴ to address changes made to the FCU Act by each of these laws.¹⁵ With respect to equity distributions from the NCUSIF, § 741.4 governs the form of a declared equity distribution (i.e., a waiver of insurance premiums, premium rebates, or a dividend directly from the NCUSIF) and the scope of financial institutions (referred to collectively

⁸ *Id.* at 1782(c)(3)(A). The FCU Act requires the Board to make a pro rata equity distribution from the NCUSIF to FICUs for each year where, at the end of the year, the following circumstances are present: (1) the NCUSIF has no outstanding loans from the U.S. Treasury and any outstanding interest on those loans has been repaid; (2) the NCUSIF's equity ratio exceeds the normal operating level set by the Board; and (3) the NCUSIF's available assets ratio exceeds 1 percent. The "normal operating level" is currently set at 1.39. The "available assets ratio" is the total of cash plus market value of unencumbered investments (less direct liabilities and contingent liabilities for which no provision for loss has been made) divided by the aggregate amount of insured FICU shares. *Id.* at 1782(h)(1).

⁹ *Id.* at 1782(c)(3)(B)(i)-(ii).

¹⁰ 12 CFR 741.4.

¹¹ Pub. L. No. 98-369, Div. B., Title VIII, § 2804, 98 Stat. 494, 1204 (July 18, 1984).

¹² Capitalization of the National Credit Union Share Insurance Fund, 49 FR 40561 (Oct. 17, 1984).

¹³ Pub. L. No. 105-219, § 302(a), 112 Stat. 913, 933 (Aug. 7, 1998).

¹⁴ Pub. L. No. 111-22, § 204(e)-(f), 123 Stat. 1632, 1650-51 (May 20, 2009).

¹⁵ National Credit Union Share Insurance Fund Premium and One Percent Deposit, 74 FR 63277 (Dec. 3, 2009).

herein as “eligible financial institutions”) eligible to receive the declared equity distribution.¹⁶

II. Summary of the Proposed Rule

On July 20, 2017, the Board issued a notice of proposed rulemaking soliciting public comment on proposed amendments to § 741.4 to provide stakeholders with greater transparency regarding the calculation of an eligible financial institution’s pro rata share of a declared equity distribution.¹⁷ As part of the proposed rulemaking, the Board also sought to adopt a temporary provision for equity distributions related to the CSRP.¹⁸

The proposed rule amended § 741.4 in several respects. First, the proposed rule amended § 741.4(e) to adopt a calculation methodology for determining each FICU’s pro rata share of a declared equity distribution based on either an eligible financial institution’s quarterly average amount of insured shares or its year-end insured shares balance as then reported in the financial institution’s year-end Call Report. Second, the proposed rule amended § 741.4(j)(1)(ii) to eliminate the ability of a FICU terminating federal share

¹⁶ Under certain circumstances, a FICU that terminates federal share insurance coverage (including through merger with a privately insured credit union) and a financial institution that converts to federal share insurance coverage (including through merger with a FICU) may receive a prorated share of an equity distribution. *See* 12 CFR 741.4(i), (j).

¹⁷ Requirements for Insurance; National Credit Union Share Insurance Fund Equity Distributions, 82 FR 35705 (Aug. 1, 2017).

¹⁸ The CSRP was a special purpose initiative to stabilize the corporate credit union system funded principally through advances from the Temporary Corporate Credit Union Stabilization Fund (TCCUSF). The TCCUSF was a temporary revolving fund within the U.S. Treasury created to address problems in the corporate credit union system that arose as part of the recent financial crisis. On September 28, 2017, the Board announced the closure of the TCCUSF and the winding down of the CSRP. *See* Closing the Temporary Corporate Credit Union Stabilization Fund and Setting the Share Insurance Fund Normal Operating Level, 82 FR 46298 (Oct. 4, 2017).

insurance coverage during the calendar year from receiving an equity distribution for that calendar year.

To accommodate these changes, the proposed rule also made technical and conforming amendments to the definitions in § 741.4(b) and the provisions governing conversion to federal share insurance in § 741.4(i). Appendix A to part 741, which provides examples of partial year federal share insurance premium assessments and equity distributions under § 741.4, was removed in favor of developing a more user-friendly and readily updated set of examples to be posted on the NCUA's public website.

The proposed rule also sought to add a temporary provision, § 741.13, to govern equity distributions related to the CSR. Because the CSR involved a series of corporate assessments to capitalize the TCCUSF, the temporary provision required any equity distribution related to the CSR to take the form of a rebate of past corporate assessments paid on either a First-In, First-Out (FIFO) or Last-In, First-Out (LIFO) basis to repay those eligible financial institutions that were required to pay a corporate assessment.

Finally, the proposed rule requested comment on ways to improve the NCUA's current process for assessing and collecting federal share insurance premiums to provide stakeholders with greater transparency. While not part of this rulemaking, the Board noted its intention to address the assessment and collection of federal share insurance premiums in a separate rulemaking based in part on stakeholder comments. One possible

improvement that the Board was considering was calculating federal share insurance premiums similarly to equity distributions.

III. Summary of the Comments to the Proposed Rule

The Board received 50 comments from various stakeholders including FICUs, national credit union trade associations, state credit union trade associations, a professional trade association for state credit union supervisors, and a natural person. Commenters overwhelmingly supported the Board's initiative to provide FICUs with greater transparency and offered general support for the proposed rule.

Commenters almost uniformly supported the Board's *four-quarter average* method for calculating an eligible financial institution's pro rata share of a declared equity distribution under § 741.4(e). One commenter wrote in support of the *year-end insured share balance* method, but did not offer any substantive arguments in support of that approach. Another commenter wrote in support of the current *average daily balance* method, reasoning that the current approach more appropriately treats an equity distribution as a dividend on the NCUSIF capitalization deposit and does not reward FICUs that aggressively grow insured share balances which can increase the overall risk to the NCUSIF.

Commenters were more evenly divided on the Board's proposed changes to § 741.4(j)(1)(ii), which prohibited the payment of an equity distribution to a FICU that

terminates federal share insurance coverage during the calendar year for which an equity distribution is declared. However, neither commenters in favor of the proposed changes nor commenters opposed to the proposed changes offered substantive arguments in support of their respective positions. Commenters in favor of the proposed changes echoed the Board's reasoning from the proposed rule and commenters opposed to the proposed changes generalized about fairness to FICUs that terminate federal share insurance coverage.

Commenters were likewise divided on whether an equity distribution related to the CSRP should take the form of a rebate of past corporate assessments paid on a LIFO or FIFO basis or using the *quarterly average* or *year-end* method, whichever was adopted in § 741.4(e). Of the commenters that indicated a preference for rebates of past corporate assessments on a LIFO or FIFO basis, an overwhelming majority favored the LIFO approach. Other commenters indicated a preference for an *aggregate assessments paid* approach, recommended by a national credit union trade association, which was neither a logical outgrowth of the LIFO or FIFO methods nor the *quarterly average* or *year-end* methods. Under the *aggregate assessments paid* approach, each FICU would have received an equity distribution based on the percentage of corporate assessments paid by that FICU over the life of the CSRP as a percentage of the aggregate corporate assessments paid by all FICUs over the life of the CSRP. The Board did not receive specific comments on any other aspect of the proposed rule, including the technical and conforming amendments proposed to §§ 741.4(b) and (i) or the elimination of Appendix A to part 741.

For the reasons set out in more detail below, the Board is adopting the *four-quarter average* method for calculating an eligible financial institution's pro rata share of an equity distribution. Additionally, the Board is adopting several new definitions to clarify provisions of the share insurance requirements rule. The Board is not adopting the change to the share insurance requirements rule that would have eliminated the ability of a FICU that terminated federal share insurance to receive an equity distribution for that calendar year. Instead, the Board is adopting a modified version of that provision that is more consistent with the *four-quarter average* method. Furthermore, the Board is also adopting a modified version of the temporary rule for equity distributions related to the CSRP that is more consistent with the *four-quarter average* method. All other changes are adopted as proposed.

IV. Section-by-Section Analysis

Section 741.4(e) Distribution of NCUSIF Equity Not Related to the CSRP

The Board has historically used a number of different calculation methodologies to determine an eligible financial institution's pro rata share of a declared equity distribution made in the normal course of business not related to the CSRP.¹⁹ Rather than leaving the calculation methodology to the discretion of the Board, proposed § 741.4(e) sought to provide stakeholders with greater transparency by establishing a set calculation

¹⁹ See e.g. 49 FR 40564 (Oct. 17, 1984) (adopting the year-end insured share balance method).

methodology for all such declared equity distributions. After considering a number of possible approaches, the Board requested public comment on two alternative calculation methodologies: (1) the use of an eligible financial institution's quarterly average insured share balance as then reported over the calendar year in four quarterly Call Reports and (2) the use of an eligible financial institution's year-end insured share balance as then reported in its December 31 Call Report.

Under the *four-quarter average* approach, an eligible financial institution's pro rata share of a declared equity distribution would be based on its quarterly average insured share balance as then reported over the calendar year in four quarterly Call Reports. To account for mergers between FICUs during the calendar year, the Board proposed to treat a continuing FICU's quarterly average insured share balance as including insured shares reported by a merging FICU during reporting periods before the completion of the merger. The Board proposed to apply similar rules to mergers between a FICU and a non-FICU financial institution (such as a bank or privately insured credit union), except that the non-FICU financial institution would be treated as having no insured shares during reporting periods for which it did not carry federal share insurance coverage.

Under the *year-end* approach, an eligible financial institution's pro rata share of a declared equity distribution would be based on its year-end insured share balance as then reported in its December 31 Call Report. This year-end insured share balance naturally included any FICU merger activity that took place during the calendar year. For any merger between a FICU and a non-FICU financial institution (such as a bank or privately

insured credit union), the Board proposed to retain the current rule set out in § 741.4(i)(2)(iii), which allows a FICU to receive an equity distribution based on its year-end insured share balance as then reported in its December 31 Call Report inclusive of any shares acquired by merging non-FICU financial institutions throughout the calendar year.

Of the two approaches, the Board noted that it favors the *four-quarter average* approach because it adjusts for seasonal fluctuations in insured share levels.²⁰ Adjusting for reasonable fluctuations allows the NCUA to make an equity distribution based on the actual average size of the eligible financial institution over the calendar year rather than at some arbitrary point in time. This is particularly important to provide fairness to smaller or community-based FICUs that may maintain relatively high insured share balances during the calendar year but may experience a larger than normal decrease in insured share balances at the end of the year as consumers liquidate Christmas club and other types of special savings accounts during the holiday season. Additionally, this approach is based on quarterly Call Report data, eliminating the need for additional paperwork burden on FICUs.

However, in the proposed rule, the Board also recognized the benefits of the *year-end* approach because it harmonizes the calculation methodology for an equity distribution with the methods for calculating the NCUSIF's equity and available assets ratios, and the dollar amount of a federal share insurance premium or distribution. In addition, the use

²⁰ See 82 FR at 35707 (Aug. 1, 2017).

of the *year-end* approach eliminates the need to create special rules for FICU mergers or terminations of federal share insurance coverage during the calendar year. Accordingly, the Board sought public comment on both approaches with the understanding that the Board would consider adopting one of the two approaches, with or without appropriate modifications, based, in part, on the persuasiveness of the comments. The Board also sought public comment on a number of issues related to each calculation methodology, including whether the look-back period under the *four-quarter average* approach should be extended to include insured share balances from previous years.

Commenters overwhelmingly favored the *four-quarter average* approach because it adjusted for seasonal fluctuations in insured share growth. However, many of these commenters largely echoed the Board's own justification for using the *four-quarter average* approach without any additional substantive arguments in favor of that position. One commenter wrote in support of the *year-end* approach, but did not offer any substantive arguments in favor of that position. Another commenter wrote in support of the Board's current policy of applying a daily distribution rate to each FICU's average daily capitalization deposit balance. This commenter raised concerns that either approach adopted by the Board would encourage eligible financial institutions to aggressively grow insured shares to receive larger equity distributions. This commenter also argued that the average daily balance method is preferable because it correctly treats an equity distribution as a dividend on a FICU's capitalization deposit.

On balance, the Board believes that accounting for seasonal fluctuations in insured share growth is a significant benefit to eligible financial institutions that outweighs the administrative convenience offered by the *year-end* approach. Furthermore, the Board disagrees with the commenter's argument that this calculation methodology encourages eligible financial institutions to aggressively grow insured shares to receive larger equity distributions. Any growth in insured shares would result in corresponding decreases to the NCUSIF's equity and available assets ratios which, if the resulting changes are large enough, could trigger a smaller equity distribution or the imposition of a federal share insurance premium. The Board believes that these potential negative outcomes sufficiently mitigate any incentive for an eligible financial institution to aggressively grow insured shares. Accordingly, the Board is adopting the *four-quarter average* approach in the final rule with some minor clarifications.

The *four-quarter average* approach relies on the use of quarterly Call Report data to determine an eligible financial institution's pro rata share of an equity distribution. Implicit in this concept is the idea that a financial institution that does not file a quarterly Call Report as a FICU for at least one reporting period in the calendar year for which the Board declares an equity distribution will not be entitled to receive a portion of that distribution nor would that FICU's insured shares be used to calculate the aggregate average amount of insured shares. For example, a FICU that files a December 31 Call Report in January 2018, but does not file a March 31 Call Report for the first quarter of 2018, would not be eligible to receive an equity distribution declared for calendar year 2018. While the Board believes that this principle is clear from a careful reading of the

preamble and regulatory text set out in the proposed rule, it is adopting a provision in the final rule to ensure the reader understands the Board's intent.

The Board is also adopting a provision in the final rule to explicitly address mergers between FICUs. In the preamble and regulatory text set out in the proposed rule, the Board addressed mergers between FICUs at some length. To avoid any confusion, the final rule clarifies that a FICU that merges with another FICU that has filed at least one Call Report for a reporting period in the calendar year for which the Board declares an equity distribution shall receive an amount equivalent to what the continuing FICU and the merging FICU would have received but for the consummation of the merger. For purposes of calculating the continuing FICU's average amount of insured shares, any insured shares previously reported during that calendar year by the merging FICU on its quarterly Call Reports filed prior to the consummation of the merger shall be combined with the insured shares reported on the continuing FICU's quarterly Call Reports for purposes of calculating the continuing FICU's equity distribution.

Furthermore, the Board is adopting a provision in the final rule to explicitly address purchase and assumption transactions. In response to the proposed rule, several commenters asked about how the *four-quarter average* approach would apply to purchase and assumption transactions where a FICU acquires all of the insured shares of another FICU. While the Board also believes that this principle should be clear from a careful reading of the preamble and regulatory text set out in the proposed rule, it is adopting a provision in the final rule to make it as transparent as possible how the Board

will address these transactions. Under the final rule, a FICU that acquires all of the insured shares of another FICU that files at least one Call Report for a reporting period in the calendar year for which the Board declares an equity distribution, shall receive an amount equivalent to what the acquiring FICU and the selling FICU would have received but for the consummation of the purchase and assumption transaction.

In all other respects, the Board is adopting the *four-quarter average* approach as proposed. Because the Board did not receive substantive comments on the appropriate look-back period for the *four-quarter average* approach, the Board is adopting a four-quarter look-back period.

Section 741.4(j) Conversion from, or Termination of, Federal Share Insurance

For 25 years, the Board did not allow a FICU that terminated federal share insurance coverage to receive an equity distribution as a matter of right. Rather, § 741.4 permitted a FICU to leave a “nominal sum” on deposit with the NCUISIF until the next equity distribution to be eligible to receive “a prorated share of the distribution.”²¹ In 2009, however, the Board broadened § 741.4 to allow a FICU that terminated federal share insurance coverage to receive a pro rata equity distribution, but only for the calendar year in which the FICU terminated coverage. The Board made this policy change as a matter of administrative convenience to avoid potentially lengthy recordkeeping requirements

²¹ See e.g. 12 CFR 741.5(i) (1985); 12 CFR 741.4(j) (1996).

imposed under the prior rule.²² Under this provision, which is codified in the current share insurance requirements rule as § 741.4(j)(1)(ii), the Board makes a prorated distribution to an insured credit union that terminates federal share insurance coverage during the calendar year for which the Board declares a pro rata distribution based on the number of full calendar months for which the insured credit union is federally insured.²³

Proposed § 741.4(j)(1)(ii) sought to eliminate the ability of a FICU that terminated federal share insurance coverage before the declaration date of an equity distribution to receive any portion of that distribution. The Board reasoned that this approach would be more consistent with general corporate practice regarding the payment of shareholder dividends. Furthermore, the Board believed that this approach would be more equitable to FICUs that remain federally insured throughout the calendar year because they bear the risk of a federal share insurance premium and are required to maintain the required capitalization deposit, while a FICU that terminates federal share insurance coverage does not. A FICU that terminates federal share insurance coverage before the assessment of a federal share insurance premium is not required to pay that premium. Under current § 741.4(j)(1)(ii), however, that former FICU may still receive an equity distribution.

Commenters were evenly split on whether the Board should adopt the proposed change to § 741.4(j)(1)(ii) or retain the current rule. Having considered the arguments advanced by the commenters, the Board believes that it is not appropriate to finalize this proposed

²² See National Credit Union Share Insurance Fund Premium and One Percent Deposit, 74 FR 63277 (Dec. 3, 2009).

²³ 12 CFR 741.4(j)(1)(ii).

change at this time. Instead, the Board believes that it would be beneficial to study this issue further, and it may revisit amendments to § 741.4(j)(1)(ii) in a future rulemaking. However, the Board is finalizing technical changes to § 741.4(j)(1)(ii) to make this provision more consistent with the *four-quarter average* method adopted in § 741.4(e). Section 741.4(j)(1)(ii) will be eliminated and codified as new § 741.4(e)(4)(i)(C). Additionally, new § 741.4(e)(4)(i)(C) will calculate the prorated distribution of a FICU that terminated federal share insurance coverage by applying the general *four-quarter average* approach set out in § 741.4(e), including the requirement that the FICU must file a Call Report for at least one reporting period in the calendar year for which the Board has declared a distribution to receive a prorated equity distribution, with one exception. For reporting periods where the FICU did not maintain federal share insurance coverage, it will be treated as having no insured shares in that period. This has the same practical effect as the current process of multiplying the FICU's last reported insured share balance by a modified premium/distribution ratio, but is computationally simpler.

Section 741.13 NCUSIF Equity Distributions Related to the CSR

The Board proposed to adopt a temporary provision governing any equity distributions resulting from the CSR. Under this temporary provision, any equity distribution related to the CSR was to take the form of a series of equity distributions repaying any corporate assessments against FICUs on either a FIFO or a LIFO basis. The Board also solicited public comment on whether it should instead use either the *four-quarter average*

or *year-end* approach with appropriate modifications to account for the unique nature of the CSRP.

Under the proposed FIFO approach, the Board would have made an equity distribution to each FICU up to the total dollar amount of corporate assessments paid by that FICU during the relevant assessment period beginning with the first assessment period in 2009. Under the proposed LIFO approach, the Board would have made an equity distribution to each FICU up to the total dollar amount of premiums paid by that FICU during the relevant assessment period beginning with the last assessment period in 2013. Of the two approaches, the Board favored the LIFO method because it ensured that FICUs received equity distributions for their most recent corporate assessments first, which generally were larger assessments, with smaller assessments that took place at the start of the CSRP being repaid over time as the NCUA-guaranteed securities issued as part of the CSRP matured.

Under either the proposed FIFO or LIFO approach, any payments owed to a FICU that had merged into another FICU would have been paid to the continuing FICU. Moreover, any payments owed to a liquidated FICU with an open liquidation estate or a closed liquidation estate still within its applicable look-back period would have been made to the liquidation estate and distributed ratably to the FICU's creditors in accordance with part 709 of the NCUA's rules.²⁴ Given the payment priority set out in part 709, the Board

²⁴ 12 CFR part 709.

anticipated that a majority of these creditors would be members with uninsured share balances rather than general creditors of the liquidation estate.

Furthermore, because any equity distribution related to the CSRP would go first towards repaying FICUs that paid corporate assessments, a FICU that had not paid a corporate assessment would not have been entitled to receive an equity distribution related to the CSRP unless all such corporate assessments are first repaid in full. Additionally, a FICU that terminated federal share insurance coverage before the payment date for an equity distribution related to the CSRP would not have been entitled to a distribution for the reasons stated above in the discussion of proposed changes to § 741.4(j)(1)(ii).

Of the commenters that indicated a preference for either the proposed FIFO or LIFO approach, an overwhelming majority favored the LIFO approach. Other commenters indicated a preference for an *aggregate assessments paid* approach recommended by a national credit union trade association. Under the *aggregate assessments paid* approach, each FICU would have received an equity distribution based on the percentage of corporate assessments paid by that FICU over the life of the CSRP as a percentage of the aggregate corporate assessments paid by all FICUs over the life of the CSRP. That approach is neither a logical outgrowth of the FIFO or LIFO methods nor a logical outgrowth of the *four-quarter average* or *year-end* methods and, thus, is outside the scope of this rulemaking.

While FIFO and LIFO would have been a way to closely link what a FICU paid in corporate assessments to what it received in equity distributions related to the CSRP, the Board acknowledges that over the past 9 years, several hundred FICUs have terminated federal share insurance at various times; there have been many FICU mergers and liquidations; and the NCUA has approved several new charters. Each of these transactions makes the calculation of each eligible financial institution's pro rata share of an equity distribution more complex. Additionally, the Board has acknowledged that FIFO and LIFO may not be completely compatible with the FCU Act requirement to make a distribution on a "pro rata" basis.

Instead, the Board believes that adopting a modified version of the *four-quarter average* method is the most appropriate approach. In the proposed rule, the Board solicited comment on whether a four-quarter look-back period, or some longer look-back period such as six or eight quarters, was preferable under the *four-quarter average* method.

Given the unique nature of the CSRP, the Board strongly believes that a longer look-back period, which tracks the period of time in which corporate assessments were being made, is appropriate for CSRP-related equity distributions because it captures share insurance activity that took place during that time.

Accordingly, the Board is adopting a modified version of the *four-quarter average* approach for CSRP-related equity distributions that includes five separate look-back periods tied directly to the beginning of the CSRP that correspond to each calendar year for which the Board may declare an equity distribution related to the CSRP. For calendar

year 2017 equity distributions, the Board will apply a 36-quarter look-back period. For calendar year 2018 equity distributions, the Board will apply a 40-quarter look-back period. For calendar year 2019 equity distributions, the Board will apply a 44-quarter look-back period. For calendar year 2020 equity distributions, the Board will apply a 48-quarter look-back period. Finally, for calendar year 2021 equity distributions, the Board will apply a 52-quarter look-back period. Applying five separate look-back periods ensures that the Board adequately accounts for share insurance activity that took place during the CSRP.

Consistent with the *four-quarter average* approach, an eligible financial institution must file at least one quarterly Call Report as a FICU for a reporting period in the calendar year for which the Board declares an equity distribution to receive a pro rata share of that distribution. Otherwise, that financial institution will not receive an equity distribution for that calendar year nor will its insured shares be used to calculate the aggregate average amount of insured shares used to determine each eligible financial institution's pro rata share of the distribution. Furthermore, a FICU that terminated federal share insurance coverage must file at least one quarterly Call Report as a FICU for a reporting period in the applicable calendar year to receive a prorated equity distribution.

V. Technical and Conforming Amendments

In addition to the proposed changes to the share insurance requirements rule governing the calculation of an eligible financial institution's pro rata share of an equity distribution

and the treatment of a FICU that terminated federal share insurance coverage, the Board proposed to make technical and conforming amendments to other aspects of § 741.4 and to Appendix A of Part 741. Commenters did not address these technical and conforming amendments. Accordingly, the Board is adopting these amendments largely as proposed with one exception. The Board is making a technical change to the aspect of the share insurance requirements rule governing newly chartered FICUs that was not previously proposed. This change will relocate regulatory text governing equity distributions to newly chartered FICUs from § 741.4(g) to § 741.4(e). Because the change is technical in nature, and does not change the substance of the rule, the Board believes that public comment on the change to this aspect of the share insurance requirements rule is unnecessary and therefore has good cause to waive the notice and comment requirements of the Administrative Procedure Act (APA).²⁵

Section 741.4(b) Definitions

To provide stakeholders with greater transparency, the Board is amending § 741.4(b) to include definitions of “aggregate amount of insured shares”, “aggregate average amount of insured shares”, “average amount of insured shares”, “federally insured credit union”, “financial institution”, “insured depository institution”, and “NCUSIF equity

²⁵ 5 U.S.C. 553(b)(B) (allowing waiver of public comment requirement when an agency for good cause finds such procedures “unnecessary”). See *Administrative Procedure Act: Legislative History*, S. Doc. No. 248 79-258 (1946), at 200 (“‘Unnecessary’ means unnecessary as far as the public is concerned, as would be the case if a minor or merely technical amendment in which the public is not particularly interested were involved.”).

distribution” in the final rule. Furthermore, the Board is revising definitions of “available assets ratio”, “equity ratio”, “insured shares”, and “reporting period”.

Section 741.4(g) New Charters

For greater readability and to improve ease of use throughout § 741.4, the Board is removing the language from § 741.4(g) addressing equity distributions for newly chartered FICUs and codifying it as new § 741.4(e)(4)(i)(A). The Board is also making technical amendments to this provision to provide for greater consistency with the *four-quarter average* method adopted above. Under current § 741.4(g), a newly chartered FICU may not receive a pro rata share of a declared equity distribution unless it has funded its capitalization deposit.²⁶ Under new § 741.4(e)(4)(i)(A), a newly chartered FICU may not receive a pro rata share of a declared equity distribution unless it has filed a quarterly Call Report for at least one reporting period in the calendar year for which the Board declares the distribution. In all other respects, current § 741.4(g) remains unchanged.

Section 741.4(i) Conversion to Federal Insurance

The Board is also making conforming amendments to §§ 741.4(i)(1)(v) and (i)(2)(iii) to reflect the adoption of the *four-quarter average* method for calculating an eligible financial institution’s pro rata share of an equity distribution not related to the CSRP.

²⁶ 12 CFR 741.4(g).

First, the Board is removing §§ 741.4(i)(1)(v) and (i)(2)(iii) and codifying those provisions as new § 741.4(e)(4)(i)(B). Section 741.4(i)(1)(v) currently allows a financial institution that converts to federal share insurance coverage during the calendar year to receive a prorated equity distribution based on the number of full calendar months for which the financial institution was a FICU.²⁷ New § 741.4(e)(4)(i)(B) largely retains this aspect of the current rule. However, rather than the current process of multiplying the FICU's year-end insured share balance by premium/distribution ratio, new § 741.4(e)(4)(i)(B) will treat the FICU as having no insured shares for the applicable reporting periods for which the financial institution did not carry federal share insurance coverage. This has the same practical effect as the current process, but is computationally simpler. Furthermore, a FICU that does not file at least one quarterly Call Report for reporting periods of the calendar year for which the Board declares the distribution shall not receive an equity distribution.

Section 741.4(i)(2)(iii) addresses an equity distribution to a FICU that merges with a financial institution that is not federally insured by the NCUA where the FICU is the surviving entity.²⁸ If the Board declares an equity distribution for the calendar year in which such a merger takes place, the continuing FICU is entitled to receive an equity distribution based on its year-end insured share balance. New § 741.4(e)(4)(i)(B) differs slightly from § 741.4(i)(2)(iii). Under the final rule, only the insured shares attributable to the continuing FICU as reported on quarterly Call Reports at that time shall be used to determine the average amount of insured shares for reporting periods preceding the date

²⁷ 12 CFR 741.4(i)(1)(v).

²⁸ 12 CFR 741.4(i)(2)(iii).

of the merger. This approach harmonizes new § 741.4(e)(4)(i)(B) with new §§ 741.4(e)(4)(i)(A) and (C) respectively.

Appendix A to Part 741 - Examples of Partial Year NCUSIF Assessment and Distribution Calculations Under § 741.4

The Board also proposed to remove Appendix A to part 741 from the NCUA's regulations and replace it with examples and frequently asked questions to be published on NCUA's public website.²⁹ Appendix A provides examples of partial year NCUSIF assessment and distribution calculations under various factual scenarios. While the Board recognizes that examples of how the NCUA makes these calculations may be useful to stakeholders, including those examples in an appendix to part 741 makes it difficult for the NCUA to update, amend, or revise the examples to provide stakeholders with additional clarity. Accordingly, the Board is removing Appendix A and replacing it with information on the NCUA's website which can be updated easily and as frequently as necessary to provide stakeholders with more clear, relevant, and timely examples regarding the calculation of partial year NCUSIF assessments and distributions.

VI. Regulatory Procedures

Regulatory Flexibility Act

²⁹ 12 CFR 741, App. A.

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities (primarily those under \$100 million in assets).³⁰ This rule has no economic impact on small credit unions because it only impacts internal NCUA procedures that are used infrequently. Accordingly, NCUA certifies the final rule will not have a significant economic impact on a substantial number of small credit unions.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where the NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. The NCUA does not believe this final rule is a “major rule” within the meaning of the relevant sections of SBREFA. As required by SBREFA, the NCUA has filed the appropriate reports so that this final rule may be reviewed.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates a new information collection requirement or amends an existing information collection requirement.³¹ For the purposes of the PRA, an information collection

³⁰ 5 U.S.C. 603(a).

³¹ 44 U.S.C. 3507(d); 5 CFR 1320.

requirement may take the form of a reporting, recordkeeping, or third-party disclosure requirement. The final rule does not contain a new information collection requirement or amend an existing information collection requirement that requires approval by OMB under the Paperwork Reduction Act (44 U.S.C. Chap. 35).

Assessment of Federal Regulations and Policies on Families.

The NCUA has determined that this final rule will not affect family well-being within the meaning of § 654 of the Treasury and General Government Appropriations Act, 1999.³²

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests.³³ The 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. The final rule will not have substantial direct effects 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. The NCUA has therefore determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

³² Pub. L. 105-277, § 654, 112 Stat. 2681, 2681-581 (1998).

³³ 64 FR 43255 (Aug. 4, 1999).

List of Subjects

12 CFR Part 741

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on February 15, 2018.

Gerard Poliquin
Secretary of the Board

For the reasons discussed above, the Board amends 12 CFR part 741 as follows:

PART 741 – REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781-1790, and 1790d; 31 U.S.C. 3717.

2. Amend § 741.4 by:

a. In paragraph (b), revising the definitions of “available assets ratio”, “equity ratio”, “insured shares”, and “reporting period”; and adding the definitions of

“aggregate amount of insured shares”, “aggregate average amount of insured shares”, “average amount of insured shares”, “Board”, “federally insured credit union”, “financial institution”, “insured depository institution”, “NCUSIF”, and “NCUSIF equity distribution”;

b. Revising paragraph (e);

c. Revising paragraph (g);

d. Removing paragraphs (i)(1)(v), (i)(2)(iii), and (j)(1)(iii);

e. Revising paragraph (j)(1)(ii); and

f. Adding paragraph (l).

The revisions and additions to read as follows:

§ 741.4 Insurance premium and one percent deposit.

* * * * *

(b) * * *

Aggregate amount of insured shares means the sum of all insured shares reported by federally insured credit unions in calendar year-end Call Reports from the calendar year for which the Board declares an NCUSIF equity distribution pursuant to paragraph (e) of this section.

* * *

Aggregate average amount of insured shares means the sum of the average amount of insured shares as then reported by all financial institutions eligible to receive an NCUSIF equity distribution under subparagraph (e)(1) of this section in quarterly Call Reports over the calendar year for which the Board declares an NCUSIF equity distribution divided by the number of reporting periods in that calendar year.

* * *

Available assets ratio means the ratio of:

(i) The amount determined by subtracting –

(A) direct liabilities of the NCUSIF and contingent liabilities for which no provision for losses has been made from

(B) the sum of cash and the market value of unencumbered investments authorized under § 203 of the Federal Credit Union Act (12 U.S.C. 1783), to

(ii) The aggregate amount of insured shares in all federally insured credit unions.

* * *

Average amount of insured shares means the sum of insured shares as then reported by a financial institution eligible to receive an NCUSIF equity distribution under subparagraph (e)(1) of this section over the calendar year for which the Board declares an NCUSIF equity distribution divided by the number of reporting periods in that calendar year.

* * *

Board means the NCUA Board or any individual or group of individuals with the delegated authority to act on behalf of the Board to implement the requirements of this section.

* * *

Federally insured credit union means a federal or state-chartered credit union that maintains federal share insurance coverage from the NCUSIF.

* * *

Financial institution means a federally insured credit union, non-federally insured credit union, or an insured depository institution, including a liquidation or receivership estate of any such credit union or depository institution.

* * *

Insured depository institution means any bank or savings association the deposits of which are insured by the Federal Deposit Insurance Corporation pursuant to the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

* * *

Insured shares means the total amount of a federally insured credit union's share, share draft and share certificate accounts, or their equivalent under state law (which may include deposit accounts), authorized to be issued to members, other credit unions, public units, or nonmembers (where permitted under the Act or equivalent state law), but does not include amounts in excess of insurance coverage as provided in part 745 of this chapter.

* * *

National Credit Union Share Insurance Fund or *NCUSIF* refers to a revolving fund established by Congress within the U.S. Treasury to provide federal share insurance coverage to federally insured credit union members and to offset the NCUA's administrative expenses associated with the conservatorship and liquidation of federally insured credit unions.

* * *

NCUSIF equity distribution means a distribution of excess equity from the NCUSIF to financial institutions eligible to receive a pro rata share of that distribution pursuant to the requirements of § 202 of the Federal Credit Union Act (12 U.S.C. 1782) and the special rules set out in subparagraph (e)(5) of this section.

* * *

NCUSIF equity ratio means the ratio of:

- (i) the amount determined by subtracting –

(A) direct liabilities of the NCUSIF and contingent liabilities for which no provision for losses has been made from

(B) the sum of all one percent deposits made by federally insured credit unions pursuant to § 741.4 of this chapter and the retained earnings balance of the NCUSIF, to

(ii) the aggregate amount of insured shares in all federally insured credit unions.

* * *

Reporting period means span of time covered by a set of financial statements. For purposes of paragraph (c) of this section, *reporting period* refers to a calendar year for federally insured credit unions with total assets of less than \$50,000,000 and refers to a semiannual period for federally insured credit unions with total assets of \$50,000,000 or more. For all other provisions of this section, *reporting period* refers to the span of time covered by a quarterly Call Report.

* * * * *

(e) *NCUSIF equity distribution.* Except as otherwise provided for by federal law or regulation, the following procedures shall apply to any NCUSIF equity distribution declared by the Board:

(1) *Eligibility for an NCUSIF equity distribution.* The Board shall make an NCUSIF equity distribution to any financial institution that files at least one quarterly Call Report as a federally insured credit union for a reporting period in the calendar year for which the Board declares the NCUSIF equity distribution.

(2) *Requirement to make an NCUSIF equity distribution.* The Board shall make an NCUSIF equity distribution on a pro rata basis to financial institutions after each calendar year if, as of the end of the calendar year:

(i) any loans to the NCUSIF from the federal government, and any interest on those loans, have been repaid;

(ii) the NCUSIF's equity ratio exceeds the normal operating level; and

(iii) the NCUSIF's available assets ratio exceeds one percent.

(3) *Amount of NCUSIF equity distribution.* The Board shall make the maximum possible NCUSIF equity distribution that does not:

(i) reduce the NCUSIF's equity ratio below the normal operating level;
and

(ii) reduce the NCUSIF's available assets ratio below one percent.

(4) *Form of NCUSIF equity distribution.* The Board shall have the discretion to determine the form of an NCUSIF equity distribution including a waiver of federal share insurance premiums, a rebate of federal share insurance premiums, a dividend, or any combination thereof.

(5) *Calculation of pro rata share of NCUSIF equity distribution.* The Board shall determine a financial institution's pro rata share of an NCUSIF equity distribution by dividing the dollar amount of the declared NCUSIF equity distribution by the aggregate average amount of insured shares for that calendar year and then multiplying by a financial institution's average amount of insured shares.

(i) *Special rules.* The following special rules shall apply to newly chartered federally insured credit unions, financial institutions that convert to federal share insurance coverage from the NCUSIF, financial institutions that terminate federal share insurance coverage from the NCUSIF, mergers between federally insured credit unions, and purchase and assumption transactions:

(A) *New charters.* A newly chartered federally insured credit union that obtains federal share insurance coverage from the NCUSIF during the calendar year shall not receive an NCUSIF equity distribution for that calendar year unless the federally insured credit union has filed at least one quarterly Call Report as a federally insured credit union for a reporting period in the calendar year for which the Board has declared a distribution.. For purposes of calculating the newly chartered federally insured credit union's average amount of insured shares, the federally insured credit union shall be treated as having no insured shares for reporting periods preceding the first reporting period in which the federally insured credit union files its first quarterly Call Report.

(B) *Conversion to federal share insurance.* A financial institution that converts to federal share insurance coverage from the NCUSIF during the calendar year for which the Board declares an NCUSIF equity distribution (including through merger into a federally insured credit union) shall receive a prorated NCUSIF equity distribution for that calendar year provided that the financial institution has filed at least one quarterly Call Report as a federally insured credit union for a reporting period in the applicable calendar year. For purposes of calculating the financial institution's average amount of insured shares, the financial

institution shall be treated as having no insured shares for reporting periods preceding the date of conversion to federal share insurance coverage. In cases of conversion through merger, only the insured shares attributable to the continuing federally insured credit union shall be used to determine the average amount of insured shares for reporting periods preceding the date of conversion.

(C) Conversion from, or termination of, federal share insurance.

A financial institution that terminates federal share insurance coverage from the NCUSIF during the calendar year for which the Board declares an NCUSIF equity distribution (including through a conversion to, or merger into, a non-federally insured credit union or an insured depository institution) shall receive a prorated NCUSIF equity distribution for that calendar year provided that the financial institution has filed at least one quarterly Call Report as a federally insured credit union for a reporting period in the applicable calendar year. For purposes of calculating the financial institution's average amount of insured shares, the financial institution shall be treated as having no insured shares for reporting periods following the date of termination of federal share insurance coverage. For purposes of this subparagraph, a financial institution that terminates federal share insurance coverage from the NCUSIF through liquidation will be treated as terminating federal share

insurance coverage during the calendar year when it enters liquidation.

(D) Mergers between federally insured credit unions. A federally insured credit union that merges with a federally insured credit union shall receive an equity distribution equivalent to what the continuing federally insured credit union and the merging federally insured credit union would have received separately but for the consummation of the merger provided that the merging federally insured credit union has filed at least one quarterly Call Report as a federally insured credit union for a reporting period in the calendar year for which the Board declares the distribution. For purposes of calculating the continuing federally insured credit union's average amount of insured shares, any insured shares previously reported by the merging federally insured credit union on its quarterly Call Reports filed prior to the consummation of the merger during that calendar year for which the Board declares the distribution shall be combined with the insured shares reported on the continuing federally insured credit union's quarterly Call Reports.

(E) Purchase and assumption transactions. A federally insured credit union that acquires all of the insured shares of another federally insured credit union in the calendar year for which the

Board declares an NCUSIF equity distribution shall receive an amount equivalent to what the acquiring federally insured credit union and the selling federally insured credit union would have received but for the consummation of the purchase and assumption transaction provided that the selling federally insured credit union has filed at least one quarterly Call Report as a federally insured credit union for a reporting period in the calendar year for which the Board declares an NCUSIF equity distribution. For purposes of calculating the acquiring federally insured credit union's average amount of insured shares, any insured shares previously reported during that calendar year for which the Board declares an NCUSIF equity distribution by the selling federally insured credit union on its quarterly Call Reports filed prior to the consummation of the purchase and assumption transaction shall be combined with the insured shares reported on the acquiring federally insured credit union's quarterly Call Reports.

* * * * *

(g) *New charters.* A newly-chartered credit union that obtains share insurance coverage from the NCUSIF during the calendar year in which it has obtained its charter will not be required to pay for insurance for that calendar year. The credit union will fund its one

percent deposit on a date to be determined by the NCUA Board in the following calendar year.

* * * * *

(j) * * *

(1) * * *

(ii) If the NCUSIF assesses a premium in the calendar year of conversion or merger on or before the day in which the conversion or merger is completed, pay a prorated premium based on the financial institution's insured shares as of the last day of the most recently ended reporting period preceding the conversion or merger multiplied by the ratio of the amount of full calendar months for which the financial institution maintained federal share insurance coverage from the NCUSIF to the number of full calendar months for the entire calendar year. If the financial institution has previously paid a premium based on this same assessment that exceeds this amount, the financial institution will receive a refund of the difference following the completion of the conversion or merger.

* * * * *

3. Effective until December 31, 2022, add § 741.13 to read as follows:

§ 741.13 NCUSIF equity distribution related to the Corporate System Resolution Program.

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Aggregate amount of insured shares* means the sum of all insured shares reported by federally insured credit unions in calendar year-end Call Reports from the calendar year for which the Board declares an NCUSIF equity distribution pursuant to paragraph (b) of this section.

(2) *Aggregate average amount of insured shares* means the sum of the average amount of insured shares as then reported by all financial institutions eligible to receive an NCUSIF equity distribution under subparagraph (b)(1) of this section in quarterly Call Reports over a given time horizon divided by the number of reporting periods in that time horizon.

(3) *Available assets ratio* means the ratio of:

(i) The amount determined by subtracting –

(A) direct liabilities of the NCUSIF and contingent liabilities for which no provision for losses has been made from

(B) the sum of cash and the market value of unencumbered investments authorized under § 203 of the Federal Credit Union Act (12 U.S.C. 1783), to

(ii) The aggregate amount of insured shares in all federally insured credit unions.

(4) *Average amount of insured shares* means the sum of insured shares as then reported by a financial institution eligible to receive an NCUSIF equity distribution under subparagraph (b)(1) of this section over a given time horizon divided by the number of reporting periods in that time horizon.

(5) *Board* means the NCUA Board or any individual or group of individuals with the delegated authority to act on behalf of the Board to implement the requirements of this section.

(6) *Corporate System Resolution Program* refers to a special program established by the Board to stabilize the corporate credit union system.

(7) *Federally insured credit union* means a federal or state-chartered credit union that maintains federal share insurance coverage from the NCUSIF.

(8) *Financial institution* means a federally insured credit union, non-federally insured credit union, or an insured depository institution, including a liquidation or receivership estate of any such credit union or depository institution.

(9) *Insured depository institution* means any bank or savings association the deposits of which are insured by the Federal Deposit Insurance Corporation pursuant to the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(10) *Insured shares* means the total amount of a federally insured credit union's share, share draft and share certificate accounts, or their equivalent under state law (which may include deposit accounts), authorized to be issued to members, other credit unions, public units, or nonmembers (where permitted under the Act or equivalent state law), but does not include amounts in excess of insurance coverage as provided in part 745 of this chapter.

(11) *National Credit Union Share Insurance Fund* or *NCUSIF* refers to a revolving fund established by Congress within the U.S. Treasury to provide federal share insurance coverage to federally insured credit union members and to offset the NCUA's administrative expenses associated with the conservatorship and liquidation of federally insured credit unions.

(12) *NCUSIF equity distribution* means a distribution of excess equity from the NCUSIF to financial institutions eligible to receive a pro rata share of that

distribution pursuant to the requirements of § 202 of the Federal Credit Union Act (12 U.S.C. 1782) and the special rules set out in subparagraph (b)(5) of this section.

(13) *NCUSIF equity ratio* means the ratio of:

(i) the amount determined by subtracting –

(A) direct liabilities of the NCUSIF and contingent liabilities for which no provision for losses has been made from

(B) the sum of all one percent deposits made by federally insured credit unions pursuant to § 741.4 of this chapter and the retained earnings balance of the NCUSIF, to

(ii) the aggregate amount of insured shares in all federally insured credit unions.

(14) *Normal operating level* means an NCUSIF equity ratio not less than 1.2 percent and not more than 1.5 percent, as established by action of the Board.

(b) *NCUSIF equity distributions related to the Corporate System Resolution Program.*

Notwithstanding § 741.4 of this chapter, the following procedures shall apply to any NCUSIF equity distribution declared for calendar years 2017 through 2021:

(1) *Eligibility for an NCUSIF equity distribution.* The Board shall make an NCUSIF equity distribution to any financial institution that files at least one quarterly Call Report as a federally insured credit union for a reporting period in the calendar year for which the Board declares the NCUSIF equity distribution.

(2) *Requirement to make an NCUSIF equity distribution.* The Board shall make an NCUSIF equity distribution on a pro rata basis to financial institutions after each calendar year if, as of the end of the calendar year:

(i) any loans to the NCUSIF from the federal government, and any interest on those loans, have been repaid;

(ii) the NCUSIF's equity ratio exceeds the normal operating level; and

(iii) the NCUSIF's available assets ratio exceeds one percent.

(3) *Amount of NCUSIF equity distribution.* The Board shall make the maximum possible NCUSIF equity distribution that does not:

(i) reduce the NCUSIF's equity ratio below the normal operating level;
and

(ii) reduce the NCUSIF's available assets ratio below one percent.

(4) *Form of NCUSIF equity distribution.* The Board shall have the discretion to determine the form of an NCUSIF equity distribution including a waiver of federal share insurance premiums, a rebate of federal share insurance premiums, a dividend, or any combination thereof.

(5) *Calculation of pro rata share of NCUSIF equity distribution.* The Board shall determine a financial institution's pro rata share of an NCUSIF equity distribution by dividing the dollar amount of the declared NCUSIF equity distribution by the aggregate average amount of insured shares for that given time horizon and then multiplying by a financial institution's average amount of insured shares.

(i) *Time Horizons.* When calculating the average amount of insured shares and the aggregate average amount of insured shares for an NCUSIF equity distribution, the following time horizons shall apply:

(A) *NCUSIF equity distribution for 2017.* The average amount of insured shares and aggregate average amount of insured shares for an NCUSIF equity distribution declared for calendar year 2017

shall be based on information from quarterly Call Reports from the preceding 36 quarters, including the calendar year-end Call Report for 2017.

(B) *NCUSIF equity distribution for 2018.* The average amount of insured shares and aggregate average amount of insured shares for an NCUSIF equity distribution declared for calendar year 2018 shall be based on information from quarterly Call Reports from the preceding 40 quarters, including the calendar year-end Call Report for 2018.

(C) *NCUSIF equity distribution for 2019.* The average amount of insured shares and aggregate average amount of insured shares for an NCUSIF equity distribution declared for calendar year 2019 shall be based on information from quarterly Call Reports from the preceding 44 quarters, including the calendar year-end Call Report for 2019.

(D) *NCUSIF equity distribution for 2020.* The average amount of insured shares and aggregate average amount of insured shares for an NCUSIF equity distribution declared for calendar year 2020 shall be based on information from quarterly Call Reports from the

preceding 48 quarters, including the calendar year-end Call Report for 2020.

(E) *NCUSIF equity distribution for 2021.* The average amount of insured shares and aggregate average amount of insured shares for an NCUSIF equity distribution declared for calendar year 2021 shall be based on information from quarterly Call Reports from the preceding 52 quarters, including the calendar year-end Call Report for 2021.

(ii) *Special rules.* The following special rules shall apply to newly-chartered federally insured credit unions, financial institutions that convert to federal share insurance coverage from the NCUSIF, financial institutions that terminate federal share insurance coverage from the NCUSIF, mergers between federally insured credit unions, and purchase and assumption transactions:

(A) *New charters.* A newly chartered federally insured credit union that obtains federal share insurance coverage from the NCUSIF during the calendar year shall not receive an NCUSIF equity distribution for that calendar year unless the federally insured credit union has filed at least one quarterly Call Report as a federally insured credit union for a reporting period in the calendar

year. For purposes of calculating the newly chartered federally insured credit union's average amount of insured shares, the federally insured credit union shall be treated as having no insured shares for reporting periods preceding the first reporting period in which the federally insured credit union files its first quarterly Call Report.

(B) *Conversion to federal share insurance.* A financial institution that converts to federal share insurance coverage from the NCUSIF during the calendar year for which the Board declares an NCUSIF equity distribution (including through merger into a federally insured credit union) shall receive a prorated NCUSIF equity distribution for that calendar year provided that the financial institution has filed at least one quarterly Call Report as a federally insured credit union for a reporting period in the calendar year. For purposes of calculating the financial institution's average amount of insured shares, the financial institution shall be treated as having no insured shares for reporting periods preceding the date of conversion to federal share insurance coverage. In cases of conversion through merger, only the insured shares attributable to the continuing federally insured credit union shall be used to determine the average amount of insured shares for reporting periods preceding the date of conversion.

(C) Conversion from, or termination of, federal share insurance.

A financial institution that terminates federal share insurance coverage from the NCUSIF during the calendar year for which the Board declares an NCUSIF equity distribution (including through a conversion to, or merger into, a non-federally insured credit union or an insured depository institution) shall receive a prorated NCUSIF equity distribution for that calendar year provided that the financial institution has filed at least one quarterly Call Report as a federally insured credit union for a reporting period in the calendar year. For purposes of calculating the financial institution's average amount of insured shares, the financial institution shall be treated as having no insured shares for reporting periods following the date of termination of federal share insurance coverage. For purposes of this subparagraph, a financial institution that terminates federal share insurance coverage from the NCUSIF through liquidation will be treated as terminating federal share insurance coverage during the calendar year when it enters liquidation.

(D) Mergers between federally insured credit unions. A

continuing federally insured credit union that merges with a federally insured credit union shall receive an equity distribution

equivalent to what the continuing federally insured credit union and the merging federally insured credit union would have received separately but for the consummation of the merger provided that the merging federally insured credit union has filed at least one quarterly Call Report as a federally insured credit union for a reporting period in the calendar year for which the Board declares the distribution. For purposes of calculating the continuing federally insured credit union's average amount of insured shares, any insured shares previously reported by the merging federally insured credit union on its quarterly Call Reports filed prior to the consummation of the merger during that calendar year for which the Board declares the distribution shall be combined with the insured shares reported on the continuing federally insured credit union's quarterly Call Reports.

(E) *Purchase and assumption transactions.* A federally insured credit union that acquires all of the insured shares of another federally insured credit union in the calendar year for which the Board declares an NCUSIF equity distribution shall receive an amount equivalent to what the acquiring federally insured credit union and the selling federally insured credit union would have received but for the consummation of the purchase and assumption transaction provided that the selling federally insured credit union

has filed at least one quarterly Call Report as a federally insured credit union for a reporting period in the calendar year for which the Board declares an NCUSIF equity distribution. For purposes of calculating the acquiring federally insured credit union's average amount of insured shares, any insured shares previously reported during that calendar year for which the Board declares an NCUSIF equity distribution by the selling federally insured credit union on its quarterly Call Reports filed prior to the consummation of the purchase and assumption transaction shall be combined with the insured shares reported on the acquiring federally insured credit union's quarterly Call Reports.

(c) *Expiration.* This section shall expire and no longer be applicable after December 31, 2022.

4. Remove Appendix A to part 741 and redesignate Appendix B and Appendix C as Appendix A and Appendix B, respectively.