

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 702

NCUA-2020-XXXX

RIN 3133-AF19

Temporary Regulatory Relief in Response to COVID-19 – Prompt Corrective Action

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule.

SUMMARY: The NCUA Board (Board) is temporarily modifying certain regulatory requirements to help ensure that federally insured credit unions (FICUs) remain operational and liquid during the COVID-19 crisis. Specifically, the Board is issuing two temporary changes to its prompt corrective action (PCA) regulations. The first amends §702.201 to temporarily enable the Board to issue an order applicable to all FICUs to waive the earnings retention requirement for any FICU that is classified as adequately capitalized. The second modifies §702.206(c) with respect to the specific documentation required for net worth restoration plans (NWRPs) for

FICUs that become undercapitalized. These temporary modifications will be in place until December 31, 2020.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments must be received on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit written comments, identified by RIN 3133-AF19, by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: (703) 518-6319. Include “[Your Name]—Comments on Temporary Regulatory Relief Rule in Response to COVID-19—Prompt Corrective Action” in the transmittal.
- Mail: Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

PUBLIC INSPECTION: You may view all public comments on the Federal eRulemaking Portal at <http://www.regulations.gov> as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA’s law library is not currently available. After

social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518-6540 or e-mailing OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: *Policy and Analysis:* Amanda Parkhill, Director, Policy Division, Office of Examination and Insurance, at (703) 518-6360; *Legal:* Marvin Shaw and Thomas Zells, Staff Attorneys, Office of General Counsel, at (703) 518-6540; or by mail at: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

SUPPLEMENTARY INFORMATION

I. Background

A. COVID-19 Pandemic

The COVID-19 pandemic has created uncertainty for FICUs and their members. The Board is working with federal and state regulatory agencies, in addition to FICUs, to assist FICUs in managing their operations and to facilitate continued assistance to credit union members and communities impacted by the coronavirus. As part of these ongoing efforts, the Board is temporarily modifying certain regulatory requirements to help ensure that FICUs continue to operate efficiently, to ensure that FICUs maintain sufficient liquidity, and to account for the potential temporary increase in shares that FICUs may experience during the COVID-19 pandemic. Specifically, the temporary amendments in this interim final rule will allow FICUs to better utilize resources by reducing the administrative burden associated with a temporary increase in shares. The Board has concluded that the amendments will provide FICUs with necessary additional flexibility in a manner consistent with the NCUA's responsibility to

maintain the safety and soundness of the credit union system. The temporary amendments are effective upon publication and will be in place through the end of calendar year 2020.

B. Prompt Corrective Action

1. Statutory Provisions

In 1998, Congress enacted the Credit Union Membership Access Act (“CUMAA”).¹ CUMAA amended the Federal Credit Union Act (“the Act”) to require the NCUA to adopt by regulation a system of PCA consisting of minimum capital standards and corresponding remedies to improve the net worth of federally-insured “natural person” credit unions.² The purpose of PCA is to “resolve the problems of insured credit unions at the least possible long-term loss to the [National Credit Union Share Insurance Fund (‘NCUSIF’)].”³

The statute designated three principal components of PCA: (1) A framework combining mandatory actions prescribed by statute with discretionary actions developed by the NCUA; (2) an alternative system of PCA to be developed by the NCUA for FICUs which CUMAA defines as “new;” and (3) a risk-based net worth requirement to apply to FICUs which the NCUA defines as “complex.” For FICUs other than those meeting the statutory definition of a “new” FICU, CUMAA mandated a framework of mandatory and discretionary supervisory actions indexed to five statutory net worth categories. These categories include “well capitalized,” “adequately capitalized,” “undercapitalized,” “significantly undercapitalized,” and “critically undercapitalized.” The mandatory actions and conditions triggering conservatorship and liquidation are expressly prescribed by statute.⁴ To supplement the mandatory actions, the

¹ Pub.L. 105-219, 112 Stat. 913 (1998).

² 12 U.S.C. 1790d *et seq.*

³ 12 U.S.C. 1790d(a)(1).

⁴ 12 U.S.C. 1790d(e), (f), (g), and (i); 12 U.S.C. 1786(h)(1)(F); 12 U.S.C. 1786(a)(3)(A)(1).

statute directed the NCUA to develop discretionary actions which are “comparable” to the “discretionary safeguards” available under section 38 of the Federal Deposit Insurance Act, which is the statute that applies PCA to other federally-insured depository institutions.⁵

The Act addresses the earnings retention requirement applicable to FICUs that are not well capitalized.⁶ Such FICUs are required to annually set aside as net worth an amount equal to not less than 0.4% of their total assets.⁷ The Board has the authority to decrease the earnings retention requirement.⁸ To accomplish this, the Board may issue an order, if it determines that the decrease is necessary to avoid a significant redemption of shares and further the purpose of that PCA provision of the Act. The Act also requires the Board to periodically review any order issued under that section.⁹

Separately, 12 U.S.C. 1790d(f) sets forth requirements related to NWRPs, which FICUs must submit to the NCUA and which the NCUA must review when a FICU becomes undercapitalized.. The regulatory provisions addressing the procedures and documentation requirements for NWRPs are codified at 12 CFR 702.206 and are detailed below.

2. Regulatory Provisions

In February 2000, the NCUA Board adopted part 702 and subpart L of part 747, establishing a comprehensive system of PCA that combines mandatory supervisory actions prescribed by the statute with discretionary supervisory actions developed by the NCUA (2000 final rule).¹⁰ Each

⁵ 12 U.S.C. 1790d(b)(1)(A); S. Rep. No. 193, 105th Cong., 2d Sess. 12 (1998) (S.Rep.); H.R. Rep. No. 472, 105th Cong; *see also* 12 U.S.C. 1831o (Section 38 of the Federal Deposit Insurance Act setting forth the PCA requirements for banks).

⁶ 12 U.S.C. 1790d(e).

⁷ 12 U.S.C. 1790d(e)(1).

⁸ 12 U.S.C. 1790d(e)(2).

⁹ 12 U.S.C. 1790d(e)(2)(B).

¹⁰ 65 FR 8560 (Feb. 18, 2000).

of these supervisory actions index to the five statutory net worth categories noted above. In addition, the 2000 final rule permits the NCUA to impose “other action to better carry out the purpose of PCA” than any discretionary supervisory action available in that category.¹¹ In the proposal that provided the basis for the 2000 final rule, the Board noted that “Part 702 also amplifies the terms of the statutory exception to the 0.4% minimum set aside. Specifically, the Board stated that it interprets the phrase *by order* to indicate that exceptions to the 0.4% statutory minimum are to be granted on a case-by-case basis.”¹² The Board has historically interpreted these orders on a case-by-case basis. However, given the current unprecedented situation where many FICUs broadly face similar circumstances that affect net worth, the Board has determined that it is appropriate to implement the changes in this rule, as detailed below.

In this rulemaking, the Board is adopting two changes to the PCA requirements. The first amends §702.201 of the NCUA’s regulations to allow the Board to temporarily waive the earnings retention requirement for an adequately capitalized FICU, and the second modifies §702.206(c) of the NCUA’s regulations with respect to NWRPs.

Section III of this preamble discusses the temporary regulatory amendments in greater detail.

II. Legal Authority

The Board is issuing this interim final rule pursuant to its authority under the Act.¹³ The Act grants the Board a broad mandate to issue regulations governing both federal credit unions and, more generally, all FICUs. For example, section 120 of the Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the

¹¹ 12 CFR 702.202(b)(9).

¹² 64 FR 27090 (May 18, 1999).

¹³ 12 U.S.C. 1751 *et seq.*

administration of the Act.¹⁴ Section 209 of the Act is a plenary grant of regulatory authority to issue rules and regulations necessary or appropriate for the Board to carry out its role as share insurer for all FICUs.¹⁵ Other provisions of the Act confer specific rulemaking authority to address prescribed issues or circumstances.¹⁶ Accordingly, the Act grants the Board broad rulemaking authority to ensure that the credit union industry and the NCUSIF remain safe and sound. Such specific rulemaking authority is set forth in section 216(b) with respect to PCA.¹⁷

III. Section-by-Section Analysis

A. Section 702.201 — Earnings retention requirement for “adequately capitalized” FICUs.

With respect to earnings retention, a FICU that is classified as “adequately capitalized” or lower must increase the dollar amount of its net worth quarterly by an amount equivalent to at least 1/10th of a percent of its total assets and must quarterly transfer at least that amount (for a total of 0.4% annually) from undivided earnings to its regular reserve account every quarter until it is “well capitalized.”¹⁸ The purpose of this provision is to restore a FICU that is less than well capitalized to a well-capitalized position in an incremental manner.

As discussed above, current §702.201 provides that the Board may waive this requirement on a case-by-case basis upon application by an affected FICU. The Act provides broader authority for the Board to issue an order to waive this requirement and does not require an application or

¹⁴ 12 U.S.C. 1766(a).

¹⁵ 12 U.S.C. 1789.

¹⁶ An example of a provision of the Act that provides the Board with specific rulemaking authority is section 207 (12 U.S.C. 1787), which is a specific grant of authority over share insurance coverage, conservatorships, and liquidations.

¹⁷ 12 U.S.C. 1790d(b).

¹⁸ This relief is provided for FICUs that are required to make an earnings retention transfer under §§ 702.201, 702.202, 702.203, 702.204, 702.304, and 702.305.

individual orders.¹⁹ In response to the COVID-19 pandemic and resulting economic disruption, the Board has determined that it is appropriate to amend §702.201 temporarily to provide express regulatory authority for the Board to issue a single order waiving the earnings retention requirement for all FICUs that are classified as adequately capitalized during this time, subject to the applicable Regional Director retaining authority to subsequently require an application if a particular FICU poses undue risk to the NCUSIF or exhibits material safety and soundness concerns. Amending the regulation in this manner will allow the Board to respond to circumstances broadly affecting many FICUs with a single issuance rather than numerous individual waiver approvals. This provision will be effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and will expire on December 31, 2020, consistent with other recent COVID-19 regulatory relief rules that the Board has issued. Separate from this regulatory amendment, the Board intends to issue the order described above, which will be applicable to adequately capitalized FICUs and will grant relief from the earnings retention requirement without requiring those FICUs to submit applications and receive individual waiver approvals, subject to the qualification noted above.

The Board is exercising this authority under 12 U.S.C. 1790d(e)(2) in order to enhance flexibility in the application of the earnings retention requirement to avoid a reduction of shares and thus retain system liquidity and capital adequacy, thereby furthering the purpose of PCA. The Board further notes that during this time, FICU operations have been significantly disrupted because of stay-at-home orders, reduced staff, and related complications. This procedure will lessen the administrative burden on FICUs, and the NCUA in providing this relief, by avoiding the need for numerous waiver applications and responses. The Board notes that qualification in

¹⁹ See 1 U.S.C. 1 (providing that unless context indicates otherwise, words importing the singular also apply to several persons or parties).

the planned order regarding FICUs that pose undue risk or material safety and soundness concerns will help ensure that the purposes of PCA are maintained during this time.

This approach affords the agency the flexibility to address potential difficulties faced by FICUs during this time of unprecedented economic hardship. The Board also notes that the current, specific requirements on earnings retention waivers are based on a regulatory provision rather than a specific statutory directive.²⁰ Accordingly, the Board has flexibility to modify the regulatory provision to address the financial circumstances of individual FICUs as well as the broader credit union system. This is consistent with the overall statutory structure of PCA, which combines both mandatory and discretionary provisions.

Credit union members are facing unprecedented pressures and looking to FICUs to provide necessary credit or access to funds, which could place strain on FICU liquidity. Allowing for a broad order relieving adequately capitalized FICUs from this requirement is consistent with the statutory criteria for issuing such an order, namely avoiding a significant redemption of shares and furthering the purpose of 12 U.S.C. 1790d to “resolve the problems of insured credit unions at the least possible long-term loss to the Fund.”²¹

Accordingly, the Board is amending §702.201 to adopt the temporary provision to issue a broadly applicable order. The Board plans to issue through a separate action an order consistent with this new provision to set forth the terms of relief from the earnings retention requirement.

B. Section 702.206(c) — Net Worth Restoration Plans (NWRPs); Contents of NWRP

²⁰ The Board notes that 12 U.S.C. 1790d(e)(1) requires earnings retention. However, additional provisions in 12 CFR part 702, including those related to timing and the content of the application, supplement this statutory provision.

²¹ 12 U.S.C. 1790d(a)(1).

With respect to NWRPs, the Act provides a broad directive that a FICU that is less than adequately capitalized must submit an applicable net worth restoration plan to the NCUA. The NCUA, by regulation, has provided additional details to flesh out this statutory provision. Section 702.206(a) of the NCUA’s regulations specifies the schedule for filing the plan, and §702.206(c) of the NCUA’s regulations outlines the contents of a net worth restoration plan.²²

The Board has decided that it is appropriate to waive the net worth restoration plan content requirements for FICUs that become classified as undercapitalized (has a net worth ratio of 4 percent to 5.99 percent) predominantly as a result of share growth. In these cases, the FICU may submit a significantly simpler net worth restoration plan to the applicable Regional Director noting that the FICU fell to undercapitalized because of share growth. Specifically, a FICU would be required to attest that its reduction in capital was caused by share growth and that such share growth is a temporary condition due to the COVID-19 pandemic. Federally insured, state-chartered credit unions must comply with applicable state requirements when submitting NWRPs for state supervisory authority approval.

²² 12 CFR 702.206(c). Under the current regulation, an NWRP must -

(1) Specify -

(i) A quarterly timetable of steps the credit union will take to increase its net worth ratio so that it becomes

“adequately capitalized” by the end of the term of the NWRP, and to remain so for four (4) consecutive calendar quarters. If “complex,” the credit union is subject to a risk-based net worth requirement that may require a net worth ratio higher than six percent (6%) to become “adequately capitalized”;

(ii) The projected amount of earnings to be transferred to the regular reserve account in each quarter of the term of the NWRP as required under § 702.201(a), or as permitted under § 702.201(b);

(iii) How the credit union will comply with the mandatory and any discretionary supervisory actions imposed on it by the NCUA Board under this subpart;

(iv) The types and levels of activities in which the credit union will engage; and

(v) If reclassified to a lower category under § 702.102(b), the steps the credit union will take to correct the unsafe or unsound practice(s) or condition(s);

(2) Include pro forma financial statements, including any off-balance sheet items, covering a minimum of the next two years; and

(3) Contain such other information as the NCUA Board has required.

When reviewing NWRPs submitted under this authority, the Regional Director will determine if the decrease in the net worth ratio was predominantly a result of share growth. To assess the reason for the decrease, the Regional Director will analyze the numerator and denominator of the net worth ratio. If there is no change or an increase in the numerator and an increase in the denominator, this would indicate that the decrease in the net worth ratio was due to share growth. If there is an increase in the denominator and a decrease in the numerator, the Regional Director will analyze whether the decrease in the numerator would have caused the credit union to fall to a lower net worth classification if there were no change in the denominator. If so, the credit union's net worth decline would not be predominantly due to share growth and the credit union would not be eligible to submit a streamlined NWRP.

The Board has determined that it is appropriate to modify the regulation addressing NWRPs given the disruption caused by the COVID-19 pandemic. The Board believes that it will be able to fulfill its statutory duty to evaluate the net worth restoration plan even if the plan is more concise and streamlined than plans submitted prior to the COVID-19 crisis. Such a streamlined approach is acceptable because the more extensive information required under the current requirements may not be practicable or useful under the current situation. Further, the current requirement addresses methods for the Board to evaluate the plan and not for approval. The Board believes it can determine if a plan is acceptable even if it lacks some of the detailed submissions that the current regulation specifies. The Board further notes that if a FICU temporary falls below being adequately capitalized (or lower) because of share growth, the risk is limited and net worth will likely increase as the shares are withdrawn.

IV. Regulatory Procedures

A. Administrative Procedure Act

The Board is issuing the interim final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).²³ Pursuant to the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”²⁴

The Board believes that the public interest is best served by implementing the interim final rule immediately upon publication in the *Federal Register*. The Board notes that the COVID-19 pandemic is unprecedented. It is a rapidly changing and difficult to anticipate how the disruptions caused by the pandemic will manifest themselves within the financial system and how individual FICUs may be impacted. Because of the widespread impact of a pandemic and the speed with which disruptions have transmitted throughout the United States, the Board believes it is has good cause to determine that ordinary notice and public procedure are impracticable and that moving expeditiously in the form of an interim final rule is in the best of interests of the public and the FICUs that serve that public. The temporary regulatory changes are proactive steps that are designed to alleviate potential liquidity and resource strains including strains on capital adequacy and are undertaken with expedience to ensure the maximum intended effects are in place at the earliest opportunity.

The Board values public input in its rulemakings and believes that providing the opportunity for comment enhances its regulations. Accordingly, the Board is soliciting

²³ 5 U.S.C. 553

²⁴ 5 U.S.C. 553(b)(3).

comments on its rules even when not required under the APA, such as for the rules it issues on an interim-final basis. The amendment made by the interim final rule will automatically expire at the close of December 31, 2020, and are limited in number and scope. For these reasons, the Board finds that there is good cause consistent with the public interest to issue the rule without advance notice and comment.²⁵

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.²⁶ Because the rule relieves currently codified imitations and restrictions, the interim final rule is exempt from the APA's delayed effective date requirement. As an alternative basis to make the rule effective without the 30-day delayed effective date, the Board finds there is good cause to do so for the same reasons set forth above regarding advance notice and opportunity for comment.

B. Congressional Review Act.

For purposes of the Congressional Review Act,²⁷ the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a “major” rule. If the OMB deems a rule to be a “major rule,” the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.

The Congressional Review Act defines a “major rule” as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely

²⁵ For the same reasons, the Board is not providing the usual 60-day comment period before finalizing this rule. See NCUA Interpretive Ruling and Policy Statement (IRPS) 87-2, as amended by IRPS 03-2 and IRPS 15-1. 80 FR 57512 (Sept. 24, 2015), available at <https://www.ncua.gov/files/publications/irps/IRPS1987-2.pdf>.

²⁶ 5 U.S.C. 553(d).

²⁷ 5 U.S.C. 801-808.

to result in (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.²⁸

For the same reasons set forth above, the Board is adopting the interim final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.²⁹ In light of current market uncertainty, the Board believes that delaying the effective date of the rule would be contrary to the public interest for the same reasons discussed above.

As required by the Congressional Review Act, the Board will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden (44 U.S.C. 3507(d)). For purposes of the PRA, a paperwork burden may take the form of a

²⁸ 5 U.S.C. 804(2).

²⁹ 5 U.S.C. 808.

reporting, recordkeeping, or a third-party disclosure requirement, referred to as an information collection.

The amendment to §702.201 is decreasing the earnings retention requirement for all FICUs that become adequately capitalized during this time. Currently, FICUs must request a waiver for each quarterly transfer made from undivided earnings to its regular reserve account until well capitalized. By the actions of this rule the waiver requirement is temporarily suspended for adequately capitalized credit unions and the information collection requirement will be reduced from 113 respondents providing three waivers annually to a single respondent, which is being retained to account for discretionary authority of the Regional Director.

Section 702.206 provides that a FICU that is less than adequately capitalized must submit an applicable NWRP to the NCUA. The temporary rule allows a FICU meeting certain conditions to submit a significantly simpler NWRP to NCUA, which will reduce the estimated burden associated with the preparation from 27 hours to 2 hours. It is also estimated that NCUA would realize a 5 percent increase in the number of respondents providing a NWRP due to changing economic conditions, for a total of 31 respondents.

The information collection requirements of part 702 (Subparts A-D) are currently covered by OMB control number 3133-0154. These temporary amendments will reduce the number of estimated responses from 482 to 90, with a decrease in the estimated total burden hours by 2,959, for a total information collection burden of 464 hours.

NCUA has obtained emergency approval from the Office of Management and Budget for a 6-month period. During this time the Agency will accept public comments on the information collection requirements and take appropriate action in the final request for PRA approval.

OMB Control Number: 3133-0154

Title of information collection: Prompt Corrective Actions, 12 CFR 702 (Subparts A-D).

Estimated number of respondents: 62.

Estimated number of responses per respondent: 1.45.

Estimated total annual responses: 90.

Estimated burden per response: 5.15.

Estimated total annual burden: 464.

The NCUA invites comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and cost of operation, maintenance, and purchase of services to provide information.

All comments are a matter of public records. Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314; Fax No. 703-519-8579; or email at PRAComments@ncua.gov. Given the limited in-house staff because of the COVID-19 pandemic, email comments are preferred.

D. Executive Order 13132

Executive Order 13132³⁰ encourages independent regulatory agencies to consider the impact of their actions on state and local interests. 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 interim 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 Board has therefore determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

E. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this interim final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.³¹

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule or a final rule pursuant to the APA³² or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis

³⁰ Executive Order 13132 on Federalism, was signed by former President Clinton on August 4, 1999, and subsequently published in the *Federal Register* on August 10, 1999 (64 FR 43255).

³¹ Public Law 105-277, 112 Stat. 2681 (1998).

³² 5 U.S.C. 553(b).

in the Federal Register.³³ Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. For purposes of the RFA, the Board considers FICUs with assets less than \$100 million to be small entities.³⁴

As discussed previously, consistent with the APA,³⁵ the Board has determined for good cause that general notice and opportunity for public comment is unnecessary, and therefore the Board is not issuing a notice of proposed rulemaking. Rules that are exempt from notice and comment procedures are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Accordingly, the Board has concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

Nevertheless, the Board seeks comment on whether, and the extent to which, the interim final rule would affect a significant number of small entities.

List of Subjects in 12 CFR Part 702

Credit unions, Reporting and record keeping requirements.

By the NCUA Board, this 21st day of May 2020.

Gerard Poliquin
Secretary of the Board

³³ 5 U.S.C. 603, 604.

³⁴ NCUA IRPS 15-1. 80 FR 57512 (Sept. 24, 2015).

³⁵ 5 U.S.C. 553(b)(3)(B).

For the reasons set forth above, the Board amends 12 CFR part 702 as follows:

PART 702—CAPITAL ADEQUACY

1. The authority citation for part 702 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1790d.

§702.201 Prompt corrective action for “adequately capitalized” credit unions.

2. Redesignate paragraphs (b)(1) and (b)(2) as paragraphs (b)(1)(i) and (b)(1)(ii), respectively;

3. Amend §702.201 by adding paragraph (b)(2) to read as follows:

* * * * *

(b) * * *

(2) *Decrease by Board Order.* Notwithstanding paragraph (a) of this section, starting on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and ending on December 31, 2020, for a credit union that is adequately capitalized:

(i) The NCUA Board may issue an administrative order specifying temporary revisions to the earnings retention requirement, to the extent the NCUA Board determines that such lesser amount—

(A) Is necessary to avoid a significant redemption of shares; and

(B) Would further the purpose of this part.

(ii) Despite the issuance of an administrative order under subparagraph (b)(2) of the section, the Regional Director may require a credit union to submit an earnings transfer

waiver under subparagraph (b)(1) if the credit union poses an undue risk the National Credit Union Share Insurance Fund or exhibits material safety and soundness concerns.

* * * * *

§702.206 Net worth restoration plans.

4. Amend §702.206 by adding subsection (c)(4) to read as follows:

* * * * *

(c) *Contents of NWRP.* An NWRP must—

(1) * * *

(2) * * *

(3) * * *

(4) Notwithstanding sections (c)(1), (c)(2) and (c)(3) of this section, the Board may permit a credit union that is undercapitalized to submit to the Regional Director a streamlined NWRP plan attesting that its reduction in capital was caused by share growth and that such share growth is a temporary condition due to COVID-19. A streamlined NWRP plan is permitted between [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] and December 31, 2020.