

7535-01-U

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 704**

**RIN 3133-AE43**

**Corporate Credit Unions**

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

**ACTION:** Proposed rule.

**SUMMARY:** The NCUA Board (Board) is issuing proposed amendments to its regulations governing corporate credit unions (Corporates) and the scope of their activities. The proposed amendments clarify the mechanics of a number of substantive regulatory provisions and also make several non-substantive, technical corrections to various provisions.

**DATES:** Comments must be received on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments by any of the following methods, but please send comments by one method only:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site:  
[http://www.ncua.gov/RegulationsOpinionsLaws/proposed\\_regs/proposed\\_regs.html](http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html).  
Follow the instructions for submitting comments.
- E-mail: Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name] – Comments on Proposed Rule – Corporate Credit Unions” in the e-mail subject line.

- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- 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.

**FOR FURTHER INFORMATION CONTACT:** David Shetler, Deputy Director, Office of National Examinations and Supervision, at the above address or telephone (703) 518-6640; or Frank Kressman, Associate General Counsel, Office of General Counsel, at the above address or telephone (703) 518-6540.

## **SUPPLEMENTARY INFORMATION:**

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##### **I. Background**

In 2010, the Board comprehensively revised the regulations governing Corporates and their activities.<sup>1</sup> The Board also amended those regulations twice more in 2011.<sup>2</sup> The Board has since identified the need to update the Corporate regulations by streamlining and clarifying certain provisions and incorporating a number of technical amendments to enhance readability. The amendments also provide a measure of regulatory relief to the Corporates.

##### **II. Proposed Amendments**

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<sup>1</sup> 12 CFR part 704; 75 FR 64786 (Oct. 20, 2010).

<sup>2</sup> 76 FR 23861 (Apr. 29, 2011); 76 FR 79531 (Dec. 22, 2011). The Board also made technical changes to the regulations in 2011 and 2013. 76 FR 16235 (Mar. 23, 2011); 78 FR 77563 (Dec. 24, 2013).

## *1. Section 704.2 – Definitions*

The current rule defines a number of terms that contain the word “capital” or otherwise relate to “capital.” Some of these terms are duplicative and unnecessary. Accordingly, the Board proposes to delete several of these terms and also redefine a number of other terms to minimize confusion and enhance the effectiveness of the regulation. The proposal deletes the distinct definitions of “adjusted core capital” and “core capital” and incorporates them into the definition of “Tier 1 capital.” The proposal also deletes the term “capital” when used as a specific measure, and replaces it with the term “total capital.” Finally, the proposal deletes the definition of “supplementary capital” and incorporates it into the definition of “Tier 2 capital.”

The proposal also deletes the definitions of the terms “asset-backed commercial paper program,” “credit enhancing interest-only strip,” and “eligible ABCP facility,” all of which are used in Appendix C to part 704. Corporates generally do not engage in the kinds of activities described by these terms. By deleting these definitions, the Board emphasizes that these activities are not consistent with the regular business activities of Corporates.

The proposal also modifies a number of definitions to provide greater clarity or to make them consistent with other NCUA regulations. These include the definitions of “available to cover losses that exceed retained earnings,” “derivatives,” “equity investment,” “equity security,” “fair value,” “internal control,” and “retained earnings.” Lastly, the current rule contains two definitions for “leverage ratio,” one for use before October 21, 2013, and one for use on or after that date. The proposal deletes the pre-October 21, 2013, definition and modifies the latter definition to reflect the proposed substitution of “Tier 1 capital” for “adjusted core capital.”

## *2. Section 704.3—Corporate credit union capital*

The proposal amends §704.3(b)(5) and §704.3(c)(3), regarding Corporate capital, to clarify that upon redeeming or calling nonperpetual capital accounts or perpetual contributed capital instruments, a Corporate must continue to meet its minimum required capital and net economic value ratios. These clarifications make the provisions consistent with each other and with the

terms and conditions of contributed capital included in the Model Forms in Appendix A to part 704. The proposal also deletes §704.3(f)(4), as that provision refers to a regulatory requirement that Corporates were to have complied with prior to December 20, 2011.

### *3. Section 704.5 – Investments*

The proposal amends §704.5(j) regarding grandfathering certain Corporate investments. The proposal clarifies that, while a Corporate may continue to hold an investment that was permissible at the time of purchase but later became impermissible because of a regulatory change, the investment is still subject to all other sections of part 704 that apply to investments, including those pertaining to credit risk management, asset and liability management, liquidity management, and investment action plans.

### *4. Section 704.6 – Credit risk management*

Section 704.6 establishes issuer and sector concentration limits to control the credit risk of Corporate investment activities, but does not specify how to value investments when calculating aggregate amounts. In response to requests for clarification, the proposal states that the appropriate measure is the value of relevant investments recorded on the books of the Corporate. This measure includes the value of the investment after accreting or amortizing the investment purchase premium or discount, as applicable.

### *5. Section 704.7 – Lending*

Section 704.7(c) currently restricts a Corporate's unsecured member lending to 50 percent of capital and its secured member lending to 100 percent of capital. First, the proposal amends the provision by basing the lending limit on the Corporate's *total* capital, consistent with the definitional changes discussed above. Second, in response to requests by Corporates for greater flexibility, the proposal amends the provision to allow a higher level of secured lending. The rule continues to limit unsecured lending to 50 percent of total capital, but permits secured

lending up to the full 150 percent of total capital limit. Under the proposal, each Corporate may determine its preferred composition of secured versus unsecured lending.

#### *6. Section 704.8 – Asset and liability management*

Section 704.8 establishes requirements to identify, measure, monitor, and control risk in the management of assets and liabilities. These include interest rate sensitivity analyses, net interest income modeling, and limiting the weighted average life of assets. Section 704.8(j) imposes reporting and other requirements on Corporates that experience a decline in net economic value (NEV) or other NEV-related measures beyond certain thresholds. The proposal clarifies that if a Corporate does experience such NEV-related breaches, but is able to adjust its balance sheet to meet required regulatory limits within 10 days, then the Corporate will not be considered to be in violation of the regulation. NCUA recognizes that, through the normal course of business, a Corporate may temporarily experience an NEV-related breach. Often, a Corporate can resolve the breach within a timely manner, which is why the current rule permits the Corporate to resolve any breach within 10 days prior to further regulatory action being taken. The proposed rule clarifies that only if a Corporate cannot resolve the breach in a timely manner would there be a cause for regulatory concern and, as such, be considered a regulatory violation.

#### *7. Section 704.9 – Liquidity management*

Section 704.9(b) currently restricts a Corporate's borrowing to the lower of 10 times capital or 50 percent of capital and shares. First, the proposal amends the provision by changing the limit to 10 percent of *total* capital, consistent with the definitional changes discussed above. Second, recognizing that tying the borrowing limit to a percentage of shares may, in the event of a share outflow, limit a Corporate's ability to borrow at a critical time, the proposal removes the restriction of 50 percent of capital and shares. Finally, the proposal increases the secured borrowing maturity limit from 30 to 120 days to accommodate seasonality in the borrowing patterns of member credit unions. NCUA believes that this extension will not materially increase risk and will allow Corporates to better serve their members.

#### *8. Section 704.11 – Corporate credit union service organizations (CUSOs)*

Section 704.11(e) addresses permissible Corporate CUSO activities and includes implementing dates that were prospective when the Board adopted the provision in 2010. Those dates have passed, and the proposal simplifies the provision by removing them.

Section 704.11(g) provides that before making an investment in or loan to a Corporate CUSO, a Corporate must obtain written agreement from the Corporate CUSO that the Corporate CUSO will meet certain requirements. These include following generally accepted accounting principles, providing financial statements to the Corporate, and obtaining an annual CPA audit. The proposal also adds the requirement that a Corporate CUSO provide to NCUA and, if applicable, the appropriate state supervisory authority (SSA) the kinds of informational reports required to be produced and submitted by natural person CUSOs pursuant to a recent revision to NCUA's general CUSO rule.<sup>3</sup> This additional information will enhance NCUA's ability to monitor a Corporate's CUSO-related activities consistent with the monitoring adopted for natural person credit unions' CUSOs.

#### *9. Section 704.14 – Representation*

Section 704.14(a)(2) provides that an individual must hold a specified management position in a member credit union to be eligible to seek election to the board of directors of a Corporate. A question has arisen as to whether the individual must hold that position at the member credit union at the time his or her Corporate board service begins. The proposal amends this provision to clarify that an individual may run for a seat on the board of a Corporate only if he or she will continue to hold one of the required member management positions at the time he or she will serve on the Corporate board. The proposal also simplifies and corrects Section 704.14 by removing expired implementing dates and replacing the term "Regional Director" with the term "ONES Director."

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<sup>3</sup> 12 CFR §712.3(d)(4) and (5); 78 FR 72537 (Dec. 3, 2013).

*10. Section 704.15 – Audit and reporting requirements*

Section 704.15 establishes auditing and reporting requirements for Corporates. When adopted in 2011, the provision contained implementing dates that have since passed. The proposal makes technical changes to the provision by eliminating those dates and correcting a typographical error.

*11. Section 704.18 – Fidelity bond coverage*

Section 704.18 establishes fidelity bond requirements for Corporate employees and officials, with maximum deductibles based on a Corporate's capital. The proposal changes the measure from *core capital* to *total capital*, consistent with the definitional changes discussed above. NCUA believes this change will have an immaterial effect on maximum deductible levels.

*12. Section 704.21 – Enterprise risk management*

Section 704.21 requires a Corporate to develop and follow an enterprise risk management policy, establish an enterprise risk management committee, and include an independent risk management expert on the committee. Paragraph (c) of this section lists the minimum qualifications for the independent expert, including specific educational and background requirements. NCUA recognizes the minimum qualifications may be overly prescriptive and subject to differences in interpretation. The critical factors are an individual's independence and experience that is commensurate with the Corporate's operations and complexity. Accordingly, the proposal removes the minimum requirements for the independent risk management expert. The Board believes this will make it easier for corporates to attract and hire qualified individuals for the position.

*13. Appendix A to Part 704 – Capital Prioritization and Model Forms*

Appendix A to part 704 includes Model Forms A - H for use by Corporates when accepting contributed capital from members. Model Forms A, B, E, and F were designed for use before October 20, 2011, and the proposed rule removes those expired forms and redesignates the remaining forms as A - D. The proposal also removes a sentence from the introductory note to current Model Form G, redesignated as Model Form C, to clarify that in some instances previously issued “paid-in capital” may not be considered perpetual contributed capital.

#### *14. Appendix B to Part 704 – Expanded Authorities and Requirements*

Appendix B to part 704 describes expanded authorities available to Corporates and the procedures for obtaining such authorities. Consistent with the earlier discussion regarding the simplification of terms relating to capital, the proposal substitutes “leverage ratio” for “capital ratio” and “total capital” for “capital.”

#### *15. Appendix C to Part 704 – Risk-Based Capital Credit Risk-Weight Categories*

Appendix C to 704 explains how a Corporate must compute its risk-weighted assets for the purpose of determining its capital ratios. Several of the assets and activities discussed such as “asset-backed commercial paper program,” “credit enhancing interest-only strip,” and “eligible ABCP facility” are not consistent with the regular business activities of Corporates. To reduce confusion, the proposal removes references to those assets and activities.

### **III. Regulatory Procedures**

#### *1. Regulatory Flexibility Act.*

The Regulatory Flexibility Act requires NCUA to prepare an analysis of any significant economic impact a regulation may have on a substantial number of small entities (primarily those under \$50 million in assets).<sup>4</sup> This proposed rule only affects Corporates, all of which

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<sup>4</sup> 5 U.S.C. 603(a); 12 U.S.C. 1787(c)(1).

have more than \$50 million in assets. Furthermore, the proposed rule consists primarily of technical and clarifying amendments. Accordingly, NCUA certifies the rule will not have a significant economic impact on a substantial number of small credit unions.

## *2. Paperwork Reduction Act.*

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden or increases an existing burden.<sup>5</sup> For purposes of the PRA, a paperwork burden may take the form of a reporting or recordkeeping requirement, both referred to as information collections. Under the proposed rule, a Corporate with an investment in or loan to a Corporate CUSO will need to revise the current agreement it has with the Corporate CUSO to provide that the Corporate CUSO will prepare and submit basic or expanded reports directly to NCUA and the appropriate SSA.

Currently, there are 14 Corporates and approximately 16 Corporate CUSOs, 13 of which provide the complex or high-risk services that require expanded reporting. The information collection burdens imposed, on an annual basis, are analyzed below.

### Changing the written agreement relating to reports to NCUA.

Frequency of response: one-time.

Initial hour burden: 4.

4 hours x 14 = 56 hours

### Initial Corporate CUSO reporting to NCUA and SSA--basic information.

Frequency of response: one-time.

Initial hour burden: 0.5.

0.5 hours x 16 = 8 hours

### Initial Corporate CUSO reporting to NCUA and SSA--expanded information.

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<sup>5</sup> 44 U.S.C. 3507(d); 5 CFR part 1320.

Frequency of response: one-time.

Initial hour burden: 3.

3 hours x 13 = 39 hours

Annual Corporate CUSO reporting to NCUA and SSA--expanded information.

Frequency of response: Annual.

Annual hour burden: 3.

3 hours x 13 = 39 hours

As required by the PRA, NCUA is submitting a copy of this proposal to OMB for its review and approval. Persons interested in submitting comments with respect to the information collection aspects of the proposed rule should submit them to OMB at the address noted below.

NCUA considers comments by the public on this proposed collection of information in:

- evaluating whether the proposed collection of information is necessary for the proper performance of the functions of NCUA, including whether the information will have a practical use;
- evaluating the accuracy of NCUA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhancing the quality, usefulness, and clarity of the information to be collected; and
- minimizing the burden of collecting 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; *e.g.*, permitting electronic submission of responses.

OMB will make a decision concerning the collection of information contained in this proposed regulation between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB

receives it within 30 days of publication. This does not affect the deadline for the public to comment to NCUA on the substantive aspects of this proposed regulation.

Comments on the proposed information collection requirements should be sent to: Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Washington, DC 20503; Attention: NCUA Desk Officer, with a copy to Amanda Wallace at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

### *3. Executive Order 13132.*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. 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 proposed rule does 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. NCUA has, therefore, determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

### *4. Assessment of Federal Regulations and Policies on Families.*

NCUA has determined that this proposed rule will not affect family well-being within the meaning of §654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

## **List of Subjects**

*12 CFR part 704*

Credit unions, Corporate credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on \_\_\_\_\_.

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Gerard Poliquin  
Secretary of the Board

For the reasons discussed above, the National Credit Union Administration proposes to amend part 704 as follows:

**PART 704—CORPORATE CREDIT UNIONS**

1. The authority citation for part 704 continues to read as follows:

**Authority:** 12 U.S.C. 1766(a), 1781, and 1789.

2. Amend §704.2 by:

a. Removing the definitions of “*Adjusted core capital*”, “*Asset-backed commercial paper program*”, “*Capital*”, “*Capital ratio*”, “*Core capital*”, “*Core capital ratio*”, “*Credit-enhancing interest-only strip*”, “*Eligible ABCP liquidity facility*”, and “*Supplementary capital*”;

b. Revising the first two sentences of the definition of “*Available to cover losses that exceed retained earnings*” to read as follows:

**§704.2 Definitions [Amended]**

\* \* \* \* \*

*Available to cover losses that exceed retained earnings* means that the funds are available to cover operating losses realized, in accordance with generally accepted accounting principles (GAAP), by the corporate credit union that exceed retained earnings and equity acquired in a combination. Likewise, *available to cover losses that exceed retained earnings and perpetual contributed capital (PCC)* means that the funds are available to cover operating losses realized, in accordance with GAAP, by the corporate credit union that exceed retained earnings and equity acquired in a combination and PCC. \* \* \*;

\* \* \* \* \*

c. Revising the definition of “*Derivatives*” to read as follows:

\* \* \* \* \*

*Derivative* means a financial contract which derives its value from the value and performance of some other underlying financial instrument or variable, such as an index or interest rate;

\* \* \* \* \*

d. Revising the definition of “*Equity investment*” to read as follows:

\* \* \* \* \*

*Equity investment* means an investment in an equity security and other ownership interest, including, for example, an investment in a partnership or limited liability company;

\* \* \* \* \*

e. Revising the definition of “*Equity security*” to read as follows:

\* \* \* \* \*

*Equity security* means any security representing an ownership interest in an enterprise (for example, common, preferred, or other capital stock) or the right to acquire (for example, warrants and call options) or dispose of (for example, put options) an ownership interest in an enterprise at fixed or determinable prices. However, the term does not include Federal Home Loan Bank stock, convertible debt, or preferred stock that by its terms either must be redeemed by the issuing enterprise or is redeemable at the option of the investor;

\* \* \* \* \*

f. Revising the definition of "*Fair value*" to read as follows:

\* \* \* \* \*

*Fair value* means the price that would be received to sell an asset, or paid to transfer a liability, in an orderly transaction between market participants at the measurement date, as defined by GAAP;

\* \* \* \* \*

g. Revising the definition of "*Internal control*" to read as follows:

\* \* \* \* \*

*Internal control* means the process, established by the corporate credit union's board of directors, officers and employees, designed to provide reasonable assurance of reliable financial reporting and safeguarding of assets against unauthorized acquisition, use, or disposition. A credit union's internal control structure generally consists of five components: control environment; risk assessment; control activities; information and communication; and monitoring. Reliable financial reporting refers to preparation of Call Reports as well as financial data published and presented to members that meet management's financial reporting objectives. Internal control over safeguarding of assets against unauthorized acquisition, use, or disposition refers to prevention or timely detection of transactions involving such unauthorized access, use, or disposition of assets which could result in a loss that is material to the financial statements;

\* \* \* \* \*

h. Removing the two definitions of "*Leverage ratio*" and replacing them with one definition to read as follows:

\* \* \* \* \*

*Leverage ratio* means the ratio of Tier 1 capital to moving daily average net assets;

\* \* \* \* \*

i. Revising the definition of "*Net assets*" to read as follows:

\* \* \* \* \*

*Net assets* means total assets less Central Liquidity Facility (CLF) stock subscriptions, loans guaranteed by the National Credit Union Share Insurance Fund (NCUSIF), and member reverse repurchase transactions. For its own account, a corporate credit union's payables under reverse repurchase agreements and receivables under repurchase agreements may be netted out if the GAAP conditions for offsetting are met. Also, any amounts deducted in calculating Tier 1 capital are also deducted from net assets;

\* \* \* \* \*

j. Revising the definition of “*Net risk-weighted assets*” to read as follows:

\* \* \* \* \*

*Net risk-weighted assets* means risk-weighted assets less CLF stock subscriptions, CLF loans guaranteed by the NCUSIF, and member reverse repurchase transactions. For its own account, a corporate credit union's payables under reverse repurchase agreements and receivables under repurchase agreements may be netted out if the GAAP conditions for offsetting are met. Also, any amounts deducted in calculating Tier 1 capital are also deducted from net risk-weighted assets;

\* \* \* \* \*

k. Revising the definition of “*Retained earnings*” to read as follows;

\* \* \* \* \*

*Retained earnings* means undivided earnings, regular reserve, reserve for contingencies, supplemental reserves, reserve for losses, and other appropriations from undivided earnings as designated by management or NCUA.

\* \* \* \* \*

l. Revising the definition of “*Tier 1 capital*” to read as follows:

\* \* \* \* \*

*Tier 1 capital* means the sum of items (1) through (4) from which items (5) through (9) are deducted:

(1) Retained earnings;

(2) Perpetual contributed capital;

(3) The retained earnings of any acquired credit union, or of an integrated set of activities and assets, calculated at the point of acquisition, if the acquisition was a mutual combination;

(4) Minority interests in the equity accounts of CUSOs that are fully consolidated;

(5) Deduct the amount of the corporate credit union's intangible assets that exceed one half percent of its moving daily average net assets (however, NCUA may direct the corporate credit union to add back some of these assets on NCUA's own initiative, by petition from the applicable state regulator, or upon application from the corporate credit union);

(6) Deduct investments, both equity and debt, in unconsolidated CUSOs;

(7) Deduct an amount equal to any PCC or NCA that the corporate credit union maintains at another corporate credit union;

(8) Beginning on October 20, 2016, and ending on October 20, 2020, deduct any amount of PCC that causes PCC minus retained earnings, all divided by moving daily net average assets, to exceed two percent; and

(9) Beginning after October 20, 2020, deduct any amount of PCC that causes PCC to exceed retained earnings;

\* \* \* \* \*

m. Adding a definition of “*Tier 1 risk-based capital ratio*” to read as follows:

\* \* \* \* \*

*Tier 1 risk-based capital ratio* means the ratio of Tier 1 capital to the moving monthly average net risk-weighted assets;

\* \* \* \* \*

n. Revising the definition of “*Tier 2 capital*” to read as follows:

\* \* \* \* \*

*Tier 2 capital* means the sum of the following items:

(1) Nonperpetual capital accounts, as amortized under §704.3(b)(3);

(2) Allowance for loan and lease losses calculated under GAAP to a maximum of 1.25 percent of risk-weighted assets;

(3) Any PCC deducted from Tier 1 capital; and

(4) Forty-five percent of unrealized gains on available-for-sale equity securities with readily determinable fair values. Unrealized gains are unrealized holding gains, net of unrealized holding losses, calculated as the amount, if any, by which fair value exceeds historical cost. NCUA may disallow such inclusion in the calculation of Tier 2 capital if NCUA determines that the securities are not prudently valued;

\* \* \* \* \*

o. Revising the definition of “*Total capital*” to read as follows:

\* \* \* \* \*

*Total capital* means the sum of Tier 1 capital and Tier 2 capital, less the corporate credit union’s equity investments not otherwise deducted when calculating Tier 1 capital;

\* \* \* \* \*

3. Amend §704.3 by revising paragraphs (b)(5), (c)(3) and (e)(3)(i) and deleting paragraph (f)(4) to read as follows:

**§704.3 Corporate credit union capital.**

\* \* \* \* \*

(b) \* \* \*

(5) *Redemption.* A corporate credit union may redeem NCAs prior to maturity or prior to the end of the notice period only if it meets its minimum required capital and net economic value ratios after the funds are redeemed and only with the prior approval of NCUA and, for state chartered corporate credit unions, the applicable state regulator.

\* \* \* \* \*

(c) \* \* \*

(3) *Callability.* A corporate credit union may call PCC instruments only if it meets its minimum required capital and net economic value ratios after the funds are called and only with the prior approval of the NCUA and, for state chartered corporate credit unions, the applicable state regulator. PCC accounts are callable on a pro-rata basis across an issuance class.

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(i) Notwithstanding the definitions of Tier 1 capital and Tier 2 capital in paragraph (d) of this section, NCUA may find that a particular asset or Tier 1 capital or Tier 2 capital component has characteristics or terms that diminish its contribution to a corporate credit union's ability to absorb losses, and NCUA may require the discounting or deduction of such asset or component from the computation of Tier 1 capital, Tier 2 capital, or total capital.

\* \* \* \* \*

4. Amend §704.5 by revising paragraph (j) to read as follows:

**§704.5 Investments.**

\* \* \* \* \*

(j) *Grandfathering.* A corporate credit union's authority to hold an investment is governed by the regulation in effect at the time of purchase. However, all grandfathered investments are subject to the other requirements of this part.

5. Amend §704.6 by revising paragraphs (c), (d), and (e) to read as follows:

**§704.6 Credit risk management.**

\* \* \* \* \*

(c) *Issuer concentration limits*—(1) General rule. The aggregate value recorded on the books of the corporate credit union of all investments in any single obligor is limited to 25 percent of total capital or \$5 million, whichever is greater.

(2) Exceptions.

(i) Investments in one obligor where the remaining maturity of all obligations is less than 30 days are limited to 50 percent of total capital;

(ii) Investments in credit card master trust asset-backed securities are limited to 50 percent of total capital in any single obligor;

(iii) Aggregate investments in repurchase and securities lending agreements with any one counterparty are limited to 200 percent of total capital;

(iv) Investments in non-money market registered investment companies are limited to 50 percent of total capital in any single obligor;

(v) Investments in money market registered investment companies are limited to 100 percent of total capital in any single obligor; and

(vi) Investments in corporate CUSOs are subject to the limitations of section 11 of this part.

(d) *Sector concentration limits.* (1) A corporate credit union must establish sector limits based on the value recorded on the books of the corporate credit union that do not exceed the following maximums:

(i) Mortgage-backed securities (inclusive of commercial mortgage-backed securities)—the lower of 1000 percent of total capital or 50 percent of assets;

(ii) Commercial mortgage-backed securities—the lower of 300 percent of total capital or 15 percent of assets;

(iii) Federal Family Education Loan Program student loan asset-backed securities—the lower of 1000 percent of total capital or 50 percent of assets;

(iv) Private student loan asset-backed securities—the lower of 500 percent of total capital or 25 percent of assets;

(v) Auto loan/lease asset-backed securities—the lower of 500 percent of total capital or 25 percent of assets;

(vi) Credit card asset-backed securities—the lower of 500 percent of total capital or 25 percent of assets;

(vii) Other asset-backed securities not listed in paragraphs (ii) through (vi) of this section—the lower of 500 percent of total capital or 25 percent of assets;

(viii) Corporate debt obligations—the lower of 1000 percent of total capital or 50 percent of assets; and

(ix) Municipal securities—the lower of 1000 percent of total capital or 50 percent of assets.

(2) Registered investment companies—A corporate credit union must limit its investment in registered investment companies to the lower of 1000 percent of total capital or 50 percent of assets. In addition to applying the limit in this paragraph, a corporate credit union must also include the underlying assets in each registered investment company in the relevant sectors described in paragraph (d)(1) of this section when calculating those sector limits.

(3) A corporate credit union must limit its aggregate holdings in any investments not described in paragraphs (d)(1) or (d)(2) of this section to the lower of 100 percent of total capital or 5 percent of assets. The NCUA may approve a higher percentage in appropriate cases.

(4) Investments in other federally insured credit unions, deposits and federal funds investments in other federally insured depository institutions, and investment repurchase agreements are excluded from the concentration limits in paragraphs (d)(1), (d)(2), and (d)(3) of this section.

(e) *Corporate debt obligation subsector limits.* In addition to the limitations in paragraph (d)(1)(viii) of this section, a corporate credit union must not exceed the lower of 200 percent of total capital or 10 percent of assets in any single North American Industry Classification System (NAICS) industry sector based on the value recorded on the books of the corporate credit union. If a corporation in which a corporate credit union is interested in investing does not have a readily ascertainable NAICS classification, a corporate credit union will use its reasonable judgment in assigning such a classification. NCUA may direct, however, that the corporate credit union change the classification.

\* \* \* \* \*

6. Amend §704.7 by revising paragraph (c) to read as follows:

**§704.7 Lending.**

\* \* \* \* \*

(c) *Loans to members—(1) Credit unions.* (i) The maximum aggregate amount in unsecured loans and lines of credit from a corporate credit union to any one member credit union, excluding pass-through and guaranteed loans from the CLF and the NCUSIF, must not exceed 50 percent of the corporate credit union's total capital.

(ii) The maximum aggregate amount in secured loans (excluding those secured by shares or marketable securities and member reverse repurchase transactions) and unsecured loans (excluding pass-through and guaranteed loans from the CLF and the NCUSIF) and lines of credit from a corporate credit union to any one member credit union must not exceed 150 percent of the corporate credit union's total capital.

(2) *Corporate CUSOs.* Any loan or line of credit from a corporate credit union to a corporate CUSO must comply with §704.11.

(3) *Other members.* The maximum aggregate amount of loans and lines of credit from a corporate credit union to any other one member must not exceed 15 percent of the corporate credit union's total capital plus pledged shares.

\* \* \* \* \*

7. Amend §704.8 by revising paragraph (j) to read as follows:

**§704.8 Asset and liability management.**

\* \* \* \* \*

(j) *Limit breaches.* (1)(i) If a corporate credit union's decline in NEV, base case NEV ratio, or any NEV ratio calculated under paragraph (d) of this section exceeds established or permitted limits, or the corporate is unable to satisfy the tests in paragraphs (f) or (g) of this section, the operating management of the corporate must immediately report this information to its board of directors and ALCO; and

(ii) If the corporate credit union cannot adjust its balance sheet to meet the requirements of paragraphs (d), (f), or (g) of this section within 10 calendar days after detection by the corporate, the corporate must notify in writing the Director of the Office of National Examinations and Supervision.

(2) If any breach described in paragraph (j)(1) of this section persists for 30 or more calendar days, the corporate credit union:

(i) Must immediately submit a detailed, written action plan to the NCUA that sets forth the time needed and means by which it intends to come into compliance and, if the NCUA determines that the plan is unacceptable, the corporate credit union must immediately restructure its balance sheet to bring the exposure back within compliance or adhere to an alternative course of action determined by the NCUA; and

(ii) If presently categorized as adequately capitalized or well capitalized for prompt corrective action purposes, and the breach was of paragraph (d) of this section, the corporate credit union will immediately be recategorized as undercapitalized until coming into compliance, and

(iii) If presently categorized as less than adequately capitalized for prompt corrective action purposes, and the breach was of paragraph (d) of this section, the corporate credit union will immediately be downgraded one additional capital category.

\* \* \* \* \*

8. Amend §704.9 by revising paragraph (b) to read as follows:

**§704.9 Liquidity.**

\* \* \* \* \*

(b) *Borrowing limits.* A corporate credit union may borrow up to 10 times its total capital.

(1) *Secured borrowings.* A corporate credit union may borrow on a secured basis for liquidity purposes, but the maturity of the borrowing may not exceed 120 days. Only a corporate credit union with Tier 1 capital in excess of five percent of its moving daily average net assets (DANA) may borrow on a secured basis for nonliquidity purposes, and the outstanding amount of secured borrowing for nonliquidity purposes may not exceed an amount equal to the difference between the corporate credit union's Tier 1 capital and five percent of its moving DANA.

(2) *Exclusions.* CLF borrowings and borrowed funds created by the use of member reverse repurchase agreements are excluded from the limit in paragraph (b)(1) of this section.

9. Amend §704.11 by revising paragraphs (b)(1), (b)(2), and (e)(1) introductory text; deleting paragraph (e)(2); redesignating paragraph (e)(3) as paragraph (e)(2); redesignating current paragraphs (g)(4) - (g)(7) as (g)(5) - (g)(8); and adding new paragraph (g)(4). The revisions and addition read as follows:

**§704.11 Corporate Credit Union Service Organizations.**

\* \* \* \* \*

(b) *Investment and loan limitations.* (1) The aggregate of all investments in member and non-member corporate CUSOs that a corporate credit union may make must not exceed 15 percent of a corporate credit union's total capital.

(2) The aggregate of all investments in and loans to member and nonmember corporate CUSOs a corporate credit union may make must not exceed 30 percent of a corporate credit union's total capital. A corporate credit union may lend to member and nonmember corporate CUSOs an additional 15 percent of total capital if the loan is collateralized by assets in which the corporate has a perfected security interest under state law.

\* \* \* \* \*

(e) *Permissible activities.* (1) A corporate CUSO must agree to limit its activities to:

\* \* \* \* \*

(g) \* \* \*

(4) Will provide the reports as required by §§712.3(d)(4) and (5) of this chapter;

\* \* \* \* \*

10. Amend §704.14 by revising paragraphs (a)(2), (a)(9), and (e)(2) to read as follows:

**§704.14 Representation.**

\* \* \* \* \*

(a)\* \* \*

(2) Only an individual who currently holds the position of chief executive officer, chief financial officer, chief operating officer, or treasurer/manager at a member credit union, and will hold that position at the time he or she is seated on the corporate credit union board if elected, may seek election or re-election to the corporate credit union board;

\* \* \* \* \*

(9) At least a majority of directors of every corporate credit union, including the chair of the board, must serve on the corporate board as representatives of natural person credit union members.

\* \* \* \* \*

(e)\* \* \*

(2) The provisions of §701.14 of this chapter apply to corporate credit unions, except that where “Regional Director” is used, read “Director of the Office of National Examinations and Supervision.”

11. Amend §704.15 by revising paragraph (a)(2)(iii) introductory text, the first sentence of paragraph (b)(2), and the first sentence of paragraph (d)(1) to read as follows:

**§704.15 Audit and reporting requirements.**

(a) \* \* \*

(2) \* \* \*

(iii) An assessment by management of the effectiveness of the corporate credit union's internal control structure and procedures as of the end of the past calendar year that must include the following:

\* \* \* \* \*

(b) \* \* \*

(2) The independent public accountant who audits the corporate credit union's financial statements must examine, attest to, and report separately on the assertion of management concerning the effectiveness of the corporate credit union's internal control structure and procedures for financial reporting.\* \* \*

\* \* \* \* \*

(d) \* \* \*

(1)\* \* \* Each corporate credit union must establish a supervisory committee, all of whose members must be independent.\* \* \*

\* \* \* \* \*

12. Amend §704.18 by removing the words “core capital ratio” wherever they appear and adding in their place “leverage ratio”; and by removing the words “core capital” wherever they appear without being followed by the word “ratio” and adding in their place “Tier 1 capital”.

13. Amend §704.21 by revising paragraph (c) to read as follows:

**§704.21 Enterprise risk management.**

\* \* \* \* \*

(c) The ERMC must include at least one independent risk management expert. The risk management expert must have at least five years of experience in identifying, assessing, and managing risk exposures. This experience must be commensurate with the size of the corporate credit union and the complexity of its operations. The board of directors may hire the independent risk management expert to work full-time or part-time for the ERMC or as a consultant for the ERMC.

\* \* \* \* \*

14. Amend Appendix A to part 704 by:

a. Removing Model Forms A, B, E, and F and redesignating Model Forms C, D, G, and H as Model Forms A, B, C, and D, respectively; and

b. Removing the second sentence of the introductory note in redesignated Model Form C.

15. Amend Appendix B to part 704 by removing the words “capital ratio” wherever they appear and adding in their place “leverage ratio”; removing the words “capital” wherever they appear without being followed by the word “ratio” and adding in their place “total capital”; and removing paragraph (e) from part 1.

16. Amend Appendix C to part 704 as follows:

**Appendix C to Part 704 – Risk-Based Capital Credit Risk-Weight Categories [Amended]**

a. In part I(b), revise paragraph (8) of definition of *Direct credit substitute* to read as follows:

\* \* \* \* \*

*Direct credit substitute*\* \* \*

(8) Liquidity facilities that provide support to asset-backed commercial paper;

\* \* \* \* \*

b. In part I(b), revise paragraph (8) of the definition of *Recourse* to read as follows:

\* \* \* \* \*

*Recourse* \* \* \*

(8) Liquidity facilities that provide support to asset-backed commercial paper;

\* \* \* \* \*

c. In part I(b), revise paragraph (2) of the definition of *Residual interests* to read as follows:

\* \* \* \* \*

*Residual interest*\* \* \*

(2) Residual interests generally include spread accounts, cash collateral accounts, retained subordinated interests (and other forms of overcollateralization), and similar assets that function as a credit enhancement. Residual interests further include those exposures that, in substance, cause the corporate credit union to retain the credit risk of an asset or exposure that had qualified as a residual interest before it was sold;

\* \* \* \* \*

d. In part II(a), revise paragraph (4)(xiii) to read as follows:

\* \* \* \* \*

(4)\* \* \*

(xiii) Interest-only strips receivable;

\* \* \* \* \*

e. In part II(b), remove paragraph (1)(iv); remove paragraph (4); redesignate paragraphs (5) and (6) as paragraphs (4) and (5), respectively; revise redesignated paragraph (4)(i); and remove redesignated paragraph (5)(v)(C). Redesignated paragraph (4)(i) to read as follows:

\* \* \* \* \*

(4)(i) Unused portions of commitments with an original maturity of one year or less;

\* \* \* \* \*

f. In part II(c), remove paragraph (2)(i); redesignate paragraphs (2)(ii) and (2)(iii) as paragraphs (2)(i) and 2(ii), respectively; and revise redesignated paragraph (2)(i) and the introductory paragraph of redesignated paragraph (2)(ii) to read as follows:

\* \* \* \* \*

(2)(i) Other residual interests. A corporate credit union must maintain risk-based capital for a residual interest equal to the face amount of the residual interest, even if the amount of risk-based capital that must be maintained exceeds the full risk-based capital requirement for the assets transferred.

(ii) Residual interests and other recourse obligations. Where a corporate credit union holds a residual interest and another recourse obligation in connection with the same transfer of assets, the corporate credit union must maintain risk-based capital equal to the greater of:

\* \* \* \* \*