This 0.25 percentage point increase in the IORR and IOER was associated with an increase in the target range for the federal funds rate, from a target range of 1 to 1¼ percent to a target range of 1¼ to 1½ percent, announced by the FOMC on December 13, 2017, with an effective date of December 14, 2017. The FOMC's press release on the same day as the announcement noted that:

Information received since the Federal Open Market Committee met in November indicates that the labor market has continued to strengthen and that economic activity has been rising at a solid rate. Averaging through hurricane-related fluctuations, job gains have been solid, and the unemployment rate declined further. Household spending has been expanding at a moderate rate, and growth in business fixed investment has picked up in recent quarters. On a 12-month basis, both overall inflation and inflation for items other than food and energy have declined this year and are running below 2 percent. Market-based measures of inflation compensation remain low; survey-based measures of longer-term inflation expectations are little changed, on balance.

Consistent with its statutory mandate, the Committee seeks to foster maximum employment and price stability. Hurricane-related disruptions and rebuilding have affected economic activity, employment, and inflation in recent months but have not materially altered the outlook for the national economy. Consequently, the Committee continues to expect that, with gradual adjustments in the stance of monetary policy, economic activity will expand at a moderate pace and labor market conditions will remain strong. Inflation on a 12-month basis is expected to remain somewhat below 2 percent in the near term but to stabilize around the Committee's 2 percent objective over the medium term. Near-term risks to the economic outlook appear roughly balanced, but the Committee is monitoring inflation developments closely.

In view of realized and expected labor market conditions and inflation, the Committee decided to raise the target range for the federal funds rate to 1¼ to 1½ percent. The stance of monetary policy remains accommodative, thereby supporting strong labor market conditions and a sustained return to 2 percent inflation.

A Federal Reserve Implementation note released simultaneously with the announcement stated that:

The Board of Governors of the Federal Reserve System voted unanimously to raise the interest rate paid on required and excess reserve balances to 1.50 percent, effective December 14, 2017.

As a result, the Board is amending section 204.10(b)(5) of Regulation D to change IORR to 1.50 percent and IOER to 1.50 percent.

III. Administrative Procedure Act

In general, the Administrative Procedure Act (12 U.S.C. 551 *et seq.*) (''APA'') imposes three principal requirements when an agency promulgates legislative rules (rules made pursuant to congressionally delegated authority): (1) Publication with adequate notice of a proposed rule; (2) followed by a meaningful opportunity for the public to comment on the rule's content; and (3) publication of the final rule not less than 30 days before its effective date. The APA provides that notice and comment procedures do not apply if the agency for good cause finds them to be ''unnecessary, impracticable, or contrary to the public interest.'' 12 U.S.C. 553(b)(3)(A). Section 553(d) of the APA also provides that publication at least 30 days prior to a rule's effective date is not required for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) a rule for which the agency finds of good cause for shortened notice and publishes its reasoning with the rule. 12 U.S.C. 553(d).

The Board has determined that good cause exists for finding that the notice, public comment, and delayed effective date provisions of the APA are unnecessary, impracticable, or contrary to the public interest with respect to these final amendments to Regulation D. The rate increases for IORR and IOER that are reflected in the final amendments to Regulation D were made with a view towards accommodating commerce and business and with regard to their bearing upon the general credit situation of the country. Notice and public comment would prevent the Board's action from being effective as promptly as necessary in the public interest, and would not otherwise serve any useful purpose. Notice, public comment, and a delayed effective date would create uncertainty about the finality and effectiveness of the Board's action and undermine the effectiveness of that action. Accordingly, the Board has determined that good cause exists to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to these final amendments to Regulation D.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[5] As noted previously, the Board has determined that it is unnecessary and contrary to the public interest to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

[5] 5 U.S.C. 603 and 604.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (''PRA'') of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no requirements subject to the PRA.

List of Subjects in 12 CFR Part 204

Banks, Banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 461, 601, 611, and 3105.

■ 2. Section 204.10 is amended by revising paragraph (b)(5) to read as follows:

§ 204.10 Payment of interest on balances.

* * * * *

(b) * * *

(5) The rates for IORR and IOER are:

	Rate (%)
IORR	1.50
IOER	1.50

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2017–27393 Filed 12–19–17; 8:45 am]

BILLING CODE 6210–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AE76

Emergency Mergers—Chartering and Field of Membership

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is issuing this final rule to amend, in its Chartering and Field of Membership

Manual, the definition of the term ''in danger of insolvency'' for emergency merger purposes. The previous definition, adopted in 2010 (2010 definition), required a credit union to fall into at least one of three net worth categories over a period of time to be ''in danger of insolvency.'' For two of those three categories, the final rule lengthens by six months the forecast horizons, the time periods in which the NCUA projects a credit union's net worth will decline to the point that it falls into one of the categories. This extends the time period in which a credit union's net worth is projected to either render it insolvent or drop below two percent from 24 to 30 months and from 12 to 18 months, respectively. Additionally, the final rule adds a fourth category to the three existing net worth categories to include credit unions that have been granted or received assistance under section 208 of the Federal Credit Union Act (FCU Act) in the 15 months prior to the NCUA regional office's determination that the credit union is in danger of insolvency.

DATES: The effective date for this rule is January 19, 2018.

FOR FURTHER INFORMATION CONTACT: Thomas I. Zells, Staff Attorney, Office of General Counsel, or Amanda Parkhill, Loss/Risk Analysis Officer, Office of Examination and Insurance, at 1775 Duke Street, Alexandria, VA 22314 or telephone: (703) 548–2478 (Mr. Zells) or (703) 518–6385 (Ms. Parkhill).

SUPPLEMENTARY INFORMATION:

I. Background

Credit unions that experience a sharp decline in net worth have a much higher likelihood of failing. From the second quarter of 1996 through the second quarter of 2016, there were 11,734 federally insured credit unions. As shown in the table below, 2,502 of these credit unions fell below the well-capitalized threshold (7 percent net worth ratio) after having a net worth ratio above that threshold for at least one quarter. The net worth ratios of 490 of these 2,502 credit unions eventually declined to below two percent. Importantly, only 15 percent of those credit unions whose net worth dropped below two percent sometime in this period remain currently active.

TABLE 1—CREDIT UNIONS FALLING BELOW CRITICAL NET WORTH RATIO THRESHOLDS

Net worth ratio fell:	Number of CUs	Active	% Active
Below 7%	2,502	1,104	44
Below 6%	1,563	475	30
Below 5%	1,126	254	23
Below 4%	825	151	18
Below 3%	647	102	16
Below 2%	490	73	15

Credit union failures are costly to the entire credit union system through their effect on the National Credit Union Share Insurance Fund (NCUSIF). The NCUA, as a prudential safety and soundness regulator, is charged with protecting the safety and soundness of the credit union system and, in turn, the NCUSIF through regulation and supervision.[1] One way to mitigate some of the cost to the NCUSIF and minimize disruption to credit union members is to find appropriate merger partners for at-risk credit unions.

Under the emergency merger provision of section 205(h) of the FCU Act, the Board may allow a credit union that is either insolvent or in danger of insolvency to merge with another credit union if the Board finds that: (1) An emergency requiring expeditious action exists; (2) no other reasonable alternatives are available; and (3) the action is in the public interest.[2] Under these circumstances, the Board may approve an emergency merger without regard to common bond or other legal constraints, such as obtaining the approval of the members of the merging credit union. The emergency merger provision addresses exigent circumstances and is intended to serve the public interest and credit union members by providing for the continuation of credit union services to members and by preserving credit union assets and the NCUSIF.

To take such action, the NCUA must first determine that a credit union is either insolvent or in danger of insolvency before the agency can make the additional findings that an emergency exists, other alternatives are not reasonably available, and the public interest would be served by the merger. The FCU Act, however, does not define when a credit union is ''in danger of insolvency.''

In 2009, the NCUA proposed a definition of in danger of insolvency to establish an objective standard to aid it in making in danger of insolvency determinations.[3] In doing so, the NCUA aimed to provide certainty and consistency regarding how it interprets the in danger of insolvency standard. In 2010, the NCUA finalized the 2009 proposed definition, which provided for the above-referenced three net worth categories, and it has remained the definition since.[4]

Experience gained since 2010, including the analysis of Call Reports and other NCUA internal data, led the Board to conclude that an update to the 2010 definition of in danger of insolvency is needed. For these reasons, the Board published proposed changes to the definition in the **Federal Register** in July 2017.[5]

II. Summary of Comments

The NCUA received 12 comments on the 2017 proposal to amend the definition of in danger of insolvency for emergency merger purposes (the Proposal). The comments were overwhelmingly supportive of the proposed definition and generally agreed with the NCUA's rationale for amending the definition. No commenters specifically opposed the proposed amendments to the definition. However, the commenters did raise several issues and made several suggestions. Specifically, commenters: Raised concerns about the impact on small credit unions and the impact of mergers on the federal charter generally; asked the NCUA to continue to study

[1] NCUA's mission is to ''provide, through regulation and supervision, a safe and sound credit union system, which promotes confidence in the national system of cooperative credit.'' *https://www.ncua.gov/About/Pages/Mission-and-Vision.aspx.*

[2] 12 U.S.C. 1785(h).

[3] 74 FR 68722 (Dec. 29, 2009).

[4] 75 FR 36257 (June 25, 2010).

[5] 82 FR 35493 (July 31, 2017).

section 208 assistance generally and the data the NCUA has on recipient credit unions; requested increased transparency in the emergency merger process; and asked the NCUA to avoid using any definition that is overly rigid and results in the premature merger of a credit union. A number of these issues and suggestions, while relevant to emergency mergers or section 208 assistance generally, fall outside the scope of this rulemaking, which is only concerned with the definition of in danger of insolvency for emergency merger purposes. The Board addresses these concerns, to the extent that they fall within the scope of the rulemaking, below. Based on the rationale previously set forth, the commenters overwhelming support, and for the reasons explained in more detail below, the Board has decided to finalize the Proposal without amendment.

III. Final Rule

A. Overview

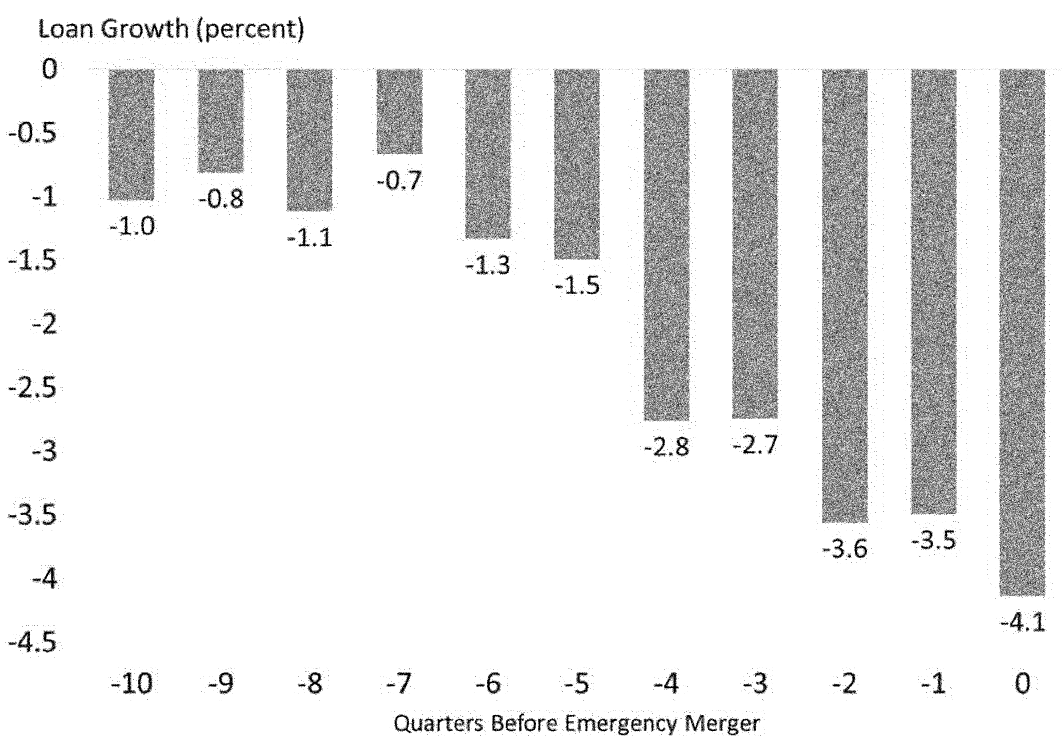
After reviewing and considering the comments, the Board is issuing this final rule to implement the changes as proposed in the Proposal. The 2010 definition of in danger of insolvency required a credit union to fall into at least one of three net worth categories to be found to be in danger of insolvency. Consistent with the Proposal, this final rule amends the 2010 definition in three ways.

First, the final rule lengthens by six months the ''forecast horizons,'' the time periods in which the NCUA projects a credit union's net worth for determining if it is in danger of insolvency. This change applies to two of the three current categories. It results in forecast horizons of 30 months for the insolvency (zero net worth) category, up from 24 months, and 18 months for the critically undercapitalized (under two percent net worth) category, up from 12 months. The third category of the 2010 definition, in which a credit union is significantly undercapitalized and the NCUA determines there is no reasonable prospect of the credit union becoming adequately capitalized in the succeeding 36 months, remains unchanged.

The second change the final rule makes is the addition of a fourth category to the definition. Specifically, a credit union will be considered in danger of insolvency if it has been granted or received assistance under section 208 of the FCU Act in the 15 months prior to the NCUA regional office's determination that the credit union is in danger of insolvency.

Third, the final rule makes a technical spelling correction to the first category of the definition to replace the word ''relay'' with the word ''rely''.

The Board believes these changes to the 2010 definition provide the NCUA with a more appropriate degree of flexibility and better allow the NCUA to act when the statutory criteria for an emergency merger are met, namely an emergency requiring expeditious action exists, no other reasonable alternatives are available, and the action is in the public interest.[6] As detailed in the Proposal and restated below, both the experience the NCUA gained in applying the current definition and quantitative data persuaded the Board that these changes are necessary. Commenters' overwhelming support for the changes further strengthened the Board's position. Under the time frames of the 2010 definition, the NCUA was, on several occasions, prevented from instituting an emergency merger because a struggling credit union had not yet met the regulatory time frames to be considered in danger of insolvency, although it had otherwise met the statutory criteria. The lack of flexibility in the 2010 definition can result in continued decline in the health of a credit union, leading to a reduction in member services as the institution moves towards resolution. As shown in the chart below, credit union loan growth declines in the quarters leading up to an emergency merger.



[6] 12 U.S.C. 1785(h).

In some instances, the rigidity of the 2010 regulatory definition unnecessarily limited the NCUA's ability to resolve failing institutions. This came at a greater cost to a credit union's members and the NCUSIF, particularly in the case of an eventual liquidation. The FCU Act grants the Board broad authority to define the term ''in danger of insolvency'' for emergency merger purposes. The new definition increases agency flexibility and will enable the NCUA to act more timely to preserve credit union services and credit union assets and to protect the safety and soundness of the credit union system and the NCUSIF. Specifically, commenters agreed that the changes will: (1) Modernize and provide increased flexibility to the emergency merger process; (2) improve merger prospects and help the NCUA and credit unions find appropriate merger partners for declining credit unions; (3) allow the NCUA to capture more credit unions that are in danger of insolvency earlier in their decline; (4) help to preserve and protect assets, liquidity, and net worth; (5) protect and mitigate costs to the NCUSIF; and (6) preserve continuity in services to members. One commenter also specifically agreed that identifying struggling credit unions and allowing them to merge is more desirable than total liquidation.

B. Extending the Forecast Horizons

The Proposal amended the definition of in danger of insolvency in the glossary to appendix B to part 701 to extend the forecast horizons. Under the 2010 definition, to be deemed in danger of insolvency under the definition's first two categories, the NCUA had to project that a credit union's future net worth would decline at a rate that would either render the credit union insolvent within 24 months or drop below two percent (critically undercapitalized) within 12 months. In the Proposal, the Board proposed extending these periods to 30 months and 18 months, respectively. The Proposal left as is the forecast horizon of the third category of the definition pertaining to significantly undercapitalized credit unions that NCUA projects have no reasonable prospect of becoming adequately capitalized in the succeeding 36 months. After reviewing the data and considering the overwhelmingly supportive comments, the Board is finalizing these amendments to the forecast horizons as proposed.

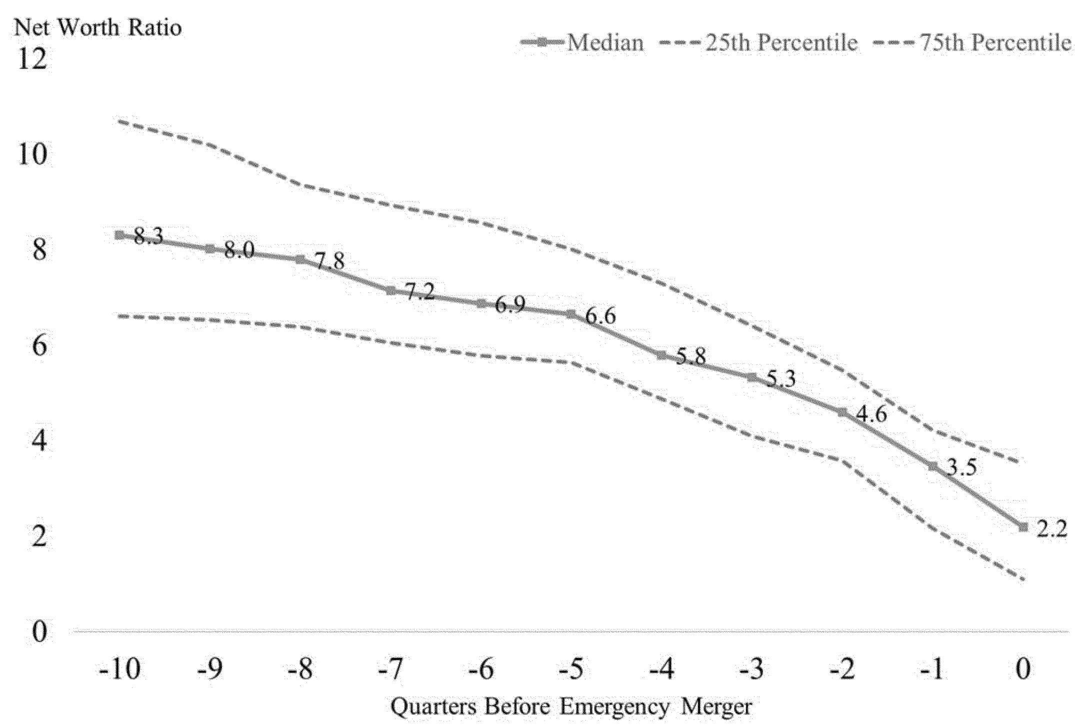
As noted in the Proposal, the Board believes that these changes to the definition will capture more credit unions that are in danger of insolvency earlier in their decline, before their net worth declines most rapidly, and will provide value to both the members of the credit union being merged and the NCUSIF. Increasing the likelihood that a distressed credit union would be eligible for an emergency merger earlier could help to protect net worth, reduce payouts on deposit insurance or merger assistance, and improve merger prospects. The changes also provide the NCUA with additional flexibility to resolve the distressed credit union through a merger and help to better ensure continuity of financial services for members. This additional flexibility is especially beneficial when circumstances deplete a credit union's capital slowly and steadily rather than abruptly, such as in the case of an institution with a large portfolio of declining illiquid assets.

As provided in the Proposal, the NCUA used a simple forecast of the net worth ratios of 46 credit unions that underwent an emergency merger between the second quarter of 2010, when the 2010 definition of in danger of insolvency was put into place, and the fourth quarter of 2016 to evaluate the benefit of shifting the critically undercapitalized threshold from 12 to 18 months and the insolvency threshold from 24 to 30 months.[7] Of the 46 credit unions that underwent an emergency merger since the rule was previously revised by the NCUA Board, 11 credit unions with total assets of $812 million would have qualified for an emergency merger earlier under the new definition of in danger of insolvency. The 11 credit unions had $12 million more in net worth at the time the credit unions first qualified under the new definition compared with the 2010 definition. The $12 million additional net worth meant the credit unions had net worth ratios one to three percentage points higher.

Also, the longer forecast horizon allows the NCUA to identify a significant number of additional potential credit union emergency merger candidates. The largest diagnostic improvements from extending the forecast horizon occur in the two quarters prior to an emergency merger. Instead of 31% of the credit unions estimated to be below the critically undercapitalized threshold within 12 months two quarters before the emergency merger and 50% one quarter before, 42% and 58% of the credit unions are estimated to be below the critically undercapitalized threshold within 18 months. The identification of these additional credit unions represent an opportunity for the NCUA to preserve services to members and member assets through the emergency merger process prior to the quarters when the net worth of these credit unions declines the most. As the chart below illustrates, credit union net worth generally declines the most in the quarters leading up to an emergency merger.

[7] This simple hypothetical forecast was used exclusively for purposes of analyzing emergency merger data and forecast horizons. It is not representative of, and does not limit, how the NCUA projects credit unions to meet the in danger of insolvency categories. The forecast of the net worth ratio uses the change in the net worth ratio during the most recently available four quarters and projects that change in net worth through the forecast horizon for each threshold. In other words, the NCUA calculated whether the credit union would fall below either of the critical thresholds using a simple straight line projection approach, with the projected rate of decline in net worth equal to the most recently available four-quarter change.

Net Worth Ratio Prior to an Emergency Merger



The data closely aligns with the views and experiences of the NCUA. The agency found that the 2010 definition's forecast horizons for these two categories could result in the unnecessary delay or even rejection of emergency merger requests that did not meet the 2010 regulatory definition of in danger of insolvency, but would otherwise meet the statutory criteria for an emergency merger. The NCUA believes that extending these forecast horizons will lessen the potential for such occurrences. When a credit union cannot be timely merged through an emergency merger and no other credit unions with compatible fields of membership submit a merger proposal, the NCUA must consider alternative and usually less desirable means of resolution. These less desirable means of resolution could even include the liquidation of the credit union. In general, merging a credit union into another institution is more desirable than liquidating the credit union because a merger is generally lower cost to the NCUSIF and provides continued and, in most cases, expanded service to the membership.

The NCUA believes that the delay associated with waiting for an institution to deteriorate to the point where it satisfies the 2010 regulatory definition of in danger of insolvency has too frequently resulted in struggling institutions being allowed to deteriorate over time to the point where they are no longer viable merger partners and have to be resolved by means that are more costly to the NCUSIF and more disruptive to the members. Rather than continue to operate under the 2010 definition, which hampered the NCUA's ability to take responsible supervisory action on a timely basis and ensure the safety and soundness of the credit union system, the Board is adopting the Proposal's amendments to the forecast horizons of the regulatory definition of in danger of insolvency to facilitate those mergers that satisfy the statutory requirements.

The vast majority of commenters specifically expressed support for the extended forecast horizons. No commenters opposed the change. Commenters' reasons for supporting the extended forecast horizons mirrored those expressed by the NCUA in the Proposal. Commenters specifically stated that the change will: (1) Improve merger prospects as credit unions will not continue to deteriorate until they are no longer viable merger partners; (2) allow undercapitalized institutions, where merited, to sooner be eligible for emergency mergers; (3) allow the NCUA to act more timely to preserve credit union services, liquidity, and assets for the benefit of members; (4) protect the NCUSIF; and (5) allow for continued (and often expanded) service to the membership. Additionally, one commenter specifically noted that the desire to preserve the NCUSIF will help federally insured credit unions avoid additional premium cost due to NCUSIF depletion. Another commenter stated that because of how expensive and draining mergers are to the acquiring organization, particularly when there is limited capital remaining or the membership base has departed, earlier identification and action by the NCUA to preserve the capital and membership base will make finding a merger partner for the merging credit union easier.

One commenter described how its credit union's experiences support the changes. The commenter stated that, as the continuing credit union, their members would have benefited greatly from an extra six months of cushion before the merging credit union deteriorated further. The commenter reiterated that mergers require months or years of due diligence and that, under the current rule, strong credit unions are reluctant to consider mergers with safety and soundness concerns because qualifying in danger of insolvency credit unions are often too far gone to allow sufficient time for proper due diligence. The commenter opined that on a few occasions they had to turn down emergency merger opportunities presented by the NCUA regional office due to safety and soundness concerns. The commenter concluded that the extended forecast horizons will help ease this pressure and bring needed flexibility.

Commenters' support for the extended forecast horizons and their description of their own real world experiences bolsters the need for the extended forecast horizons. As such, the Board is finalizing the 30-month insolvency and 18-month critically undercapitalized forecast horizons as proposed.

As proposed, the final rule leaves the forecast horizon for the third category of the current definition as is. Rather than establishing a time period in which credit unions are projected to decline to a certain point, as the other two categories do, the third category only allows the NCUA to find that a credit union is in danger of insolvency if the credit union has no reasonable prospect of improving its net worth from the significantly undercapitalized level to the adequately capitalized level in the succeeding 36 months. The Board believes that the forecast horizon for this category adopted in 2010 already provides credit unions significant time to become adequately capitalized and is concerned that any extension to the forecast horizon would make it exceedingly difficult to accurately determine if a credit union has a reasonable possibility of returning its net worth to the adequately capitalized level.

C. Section 208 Assistance

In the Proposal, the Board proposed expanding the definition of in danger of insolvency in the glossary to appendix B to part 701 to add a fourth category that provides that a credit union will satisfy the definition of in danger of insolvency if the credit union has been granted or received assistance under section 208 of the FCU Act in the 15 months prior to the NCUA regional office making such a determination. Section 208 allows the Board to provide special assistance to credit unions to avoid liquidation. After reviewing the data and the comments, the Board has decided to adopt this change as proposed.

In the Proposal the Board noted that, in analyzing credit union Call Reports and other internal NCUA data, the NCUA has found that an overwhelming number of credit unions that received section 208 assistance eventually left the credit union system. Specifically, between the first quarter of 2001 and the fourth quarter of 2016, 181 credit unions received at least one type of section 208 assistance. Since then, 165, or 91.2%, of these credit unions have stopped filing Call Reports.

Further, the data shows that not only did the overwhelming majority of the credit unions that received section 208 assistance stop filing Call Reports, but did so not long after, or prior to, receiving the assistance. Notably, 13.9% of the total number of credit unions that received section 208 assistance began receiving such assistance after they filed their final Call Report. An additional 37.0% of these 165 credit unions filed their final Call Report in the same quarter in which they first began receiving section 208 assistance. Another 41.2% of these credit unions filed their final Call Report within the four quarters after the quarter they first received section 208 assistance. In total, 152 of the 165 credit unions, or 92.1%, stopped filing Call Reports prior to or within 15 months of receiving the section 208 assistance.

CREDIT UNIONS RECEIVING SECTION 208 ASSISTANCE—FIRST RECEIPT OF SECTION 208 ASSISTANCE TO LAST CALL REPORT FILED

	Number	%
Same quarter	61	37.0
1 year	68	41.2
2 years	3	1.8
3 years	2	1.2
4 or more years	8	4.8
Assistance began after final call report was filed	23	13.9
Total	165	100.0

The quantitative evidence, along with the NCUA's experiences and observations, demonstrate that credit unions receiving section 208 assistance within the last 15 months are in danger of insolvency for emergency merger purposes.

The majority of commenters explicitly supported the proposed fourth category and felt the NCUA's data clearly showed that credit unions receiving 208 assistance are in danger of insolvency. While no commenter opposed the addition of the fourth category, a number did provide suggestions and feedback. However, much of this feedback falls outside the scope of this rulemaking.

Specifically, one commenter who supported the change also argued that the data shows problems with 208 assistance generally and that the current process covers up foundational problems inherent in credit unions approaching insolvency. The commenter urged the NCUA to explore ways to either improve the success of 208 assistance or to seek more effective remedies to help struggling credit unions. Additionally, four commenters requested that the NCUA further analyze the credit unions that survived after receiving 208 assistance to ensure the success of future recipients. One of these commenters specifically asked the NCUA to consider whether more stringent criteria is warranted when receiving 208 assistance. Another of these commenters recommended that the NCUA continue to collect and analyze the 208 assistance data. Another commenter specifically asked that the NCUA exhaust all efforts to assist credit unions receiving 208 assistance to regain strength.

The Proposal sought comment on amendments to the in danger of insolvency standard for purposes of determining credit unions' eligibility for emergency mergers. This included whether the addition of the fourth category is proper. The comments received addressing section 208 assistance in a capacity other than its merits as an indication that a credit union is in danger of insolvency for emergency merger purposes, while generally helpful and appreciated, fall outside the scope of this rulemaking. However, the Board does note that the NCUA has previously and will continue to evaluate the 208 assistance program and the data the agency collects on it on an ongoing basis.

One commenter noted the delicate balance the NCUA must strike between the public policy behind 208 assistance and the implementation of this fourth category. The commenter stressed that the in danger of insolvency determination should be holistic and not based solely or primarily on a credit union's request or acceptance of 208 assistance. A separate commenter supported the addition of the fourth category, but cautioned that adding 208 assistance to the definition could deter credit unions from seeking 208 assistance.

The Board agrees that the determination that a credit union is eligible for an emergency merger must be made holistically rather than just based on a credit union's request for or acceptance of 208 assistance. The Board reiterates that it is not proposing that every credit union that receives section 208 assistance, thus meeting the new definition of in danger of insolvency, is destined for an emergency merger. In fact, the Board cannot authorize an emergency merger on this determination alone. Credit unions to be merged on an emergency basis still must meet the statutory requirements that an emergency exists, other alternatives are not reasonably available, and the public interest would be served by the merger.[8] However, quantitative evidence and the NCUA's experience do indicate that a credit union's receipt of section 208 assistance is a reliable indicator of a credit union being in danger of insolvency and a safety and soundness concern.

For similar reasons, the Board does not believe that using section 208 assistance to determine that a credit union is in danger of insolvency is likely to deter credit unions from seeking 208 assistance. The Board's determination that an emergency merger is necessary is a holistic one and subject to the above strict statutory requirements. Further, credit unions that receive section 208 assistance typically do so only when necessary to avoid liquidation or reduce risk to the NCUSIF. Whether they would potentially be part of an emergency merger down the line should they survive seems a minor concern.

D. Technical Correction

The final rule replaces the word ''relay'' with the word ''rely'' as proposed. One commenter specifically supported this change.

E. Other Issues Raised by Commenters

Rigid Guidelines

Two commenters specifically cautioned against any regime that would result in rigid guidelines forcing credit union mergers. One of the commenters cited data in the Proposal that showed that roughly 73 credit unions that fell below two percent net worth during the last 20 years remain active today as evidence of the need to avoid ''impos[ing] an inflexible, one-size-fits-all rubric to resolve financially-challenged institutions.'' The Board understands this concern, and reiterates that the aim of this rulemaking is to return flexibility to the in danger of insolvency definition, not to force credit unions that meet the definition into emergency mergers. Further, credit unions are not forced into emergency mergers. While it is true that fledgling institutions may be left with limited options, including liquidation, a credit union's Board of Directors must consent to an emergency merger for it to occur.

Transparency

One commenter argued for a more transparent emergency merger process. The commenter suggested prospective merger partners be fully apprised of important information regarding the selection process and have the opportunity to make their case for the merger. To increase transparency and guide future emergency mergers, the commenter asked the NCUA to provide prospective merger partners with a written explanation of the reasons for its decision. The emergency merger process is a collaborative one between the merging credit union, the potential acquiring credit unions, the state regulator if applicable, and the NCUA. The Board believes that potential acquiring credit unions are currently provided with a transparent view of the emergency merger process. Further, this rulemaking focuses on the in danger of insolvency definition rather than the emergency merger process generally. As such, this comment is beyond the scope of this rulemaking but nevertheless appreciated.

Impact on Small Credit Unions

One commenter said that small credit unions' lack of resources often frustrates the merger process and requested the NCUA try to alleviate these potential issues by providing more streamlined procedures for merger of small institutions. The commenter noted that even with the increased forecast horizons, there may still be delays in the actual emergency merger process. The commenters did not specify how the procedures for emergency mergers could be streamlined to assist small institutions. This rulemaking relates only to the in danger of insolvency definition. As such, comments relating to procedures governing other aspects of the emergency merger process are beyond the scope of this rulemaking but still appreciated.

Another commenter read the proposal's Paperwork Reduction Act and Regulatory Flexibility Act sections to mean that the NCUA believed the proposed changes focused on regulating larger credit unions and did not impact a significant number of smaller credit unions. The commenter advised the NCUA to review how the proposal will actually impact smaller credit unions. Specifically, the commenter suggested the NCUA research whether the Proposal affects small credit unions through evaluation forecasts, prompt corrective action, and net worth restoration plans. The commenter requested that the NCUA analyze and explain whether subjective application of the definition will disproportionately affect small credit unions, as examiners may be more likely to accept (or even push for) a forecast for small credit unions that reflects a danger of insolvency.

The Proposal's Paperwork Reduction Act and Regulatory Flexibility Act analyses do not state that the changes to the in danger of insolvency definition are focused on regulating larger institutions. Instead, they convey that the changes do not have a significant economic impact on a substantial number of small credit unions and do not require additional information collection requirements. The analyses state that the proposed amendments instead are intended to return flexibility to the NCUA in making the in danger of insolvency determination.

Other

One commenter was particularly concerned that the NCUA ''emphasize and uphold the importance and viability of the credit union charter.'' The commenter said the NCUA has a dual obligation to preserve and protect the NCUSIF and the federal credit union system. The commenter stressed the value federal credit union charters hold and asserted that while a strong emphasis on finances is important in the emergency merger context, a more holistic evaluation that includes the three other statutory criteria should be incorporated to preserve the value of FCU charters.

The Board appreciates its responsibility to serve both as the charterer and prudential regulator of federal credit unions and the insurer of all federally insured credit unions. As the Board has noted both in the Proposal and above, it appreciates that the emergency merger evaluation is a holistic one that, in addition to the insolvent or in danger of insolvency determination, includes the Board's determination that the credit union meets the three other statutory criteria that: Exigent circumstances exist; there are no other reasonable alternatives available; and the emergency merger is in the public interest.[9] To reiterate, this final rule is not intended to encourage more emergency mergers or promote consolidation, but to return some flexibility to the definition of in danger of insolvency so that credit unions that are in fact in danger of insolvency can become *eligible* for an emergency merger.

Another commenter suggested that ''the Board consider standardizing timeframes contained both within this final rule as well as throughout all regulations relative to capitalization and net worth.'' The commenter noted that for risk-based capital purposes, the NCUA uses a 24-month look-back period and that for the in danger of insolvency determination the timelines would now be: 30 months for the

[8] 12 U.S.C. 1785(h).

[9] *Id.*

insolvency category; 18 months for the critically undercapitalized category; 36 months for the significantly undercapitalized category; and 15 months for the proposed 208 assistance category. The commenter said that while it ''supports the extensions and additions suggested in the proposed rule, it is recommended that a holistic view of look-back and forecast timeframes is important and suggests that standardization of such timeframes may assist the industry.'' The Board does not necessarily agree that standardization of timeframes across NCUA's regulations relative to capitalization and net worth is desirable or would benefit credit unions. Further, the Board believes this comment to beyond the scope of this rulemaking.

IV. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis of any significant economic impact a regulation may have on a substantial number of small entities (primarily those under $100 million in assets).[10] This final rule merely provides the NCUA greater flexibility to authorize emergency mergers and will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates new or amends existing information collection requirements.[11] For the purpose of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The final rule does not contain information collection requirements that require approval by OMB under the PRA.[12] The final rule will merely provide the NCUA greater flexibility to authorize emergency mergers.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rulemaking will not have a substantial direct effect on the states, on the connection 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.

[10] 5 U.S.C. 603(a).

[11] 44 U.S.C. 3507(d); 5 CFR part 1320.

[12] 44 U.S.C. chap. 35.

D. 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 Section 654 of the Treasury and General Government Appropriations Act, 1999.[13]

E. 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.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 14, 2017.

Gerard Poliquin,

Secretary of the Board.

For the reasons discussed above, the NCUA Board amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 is revised to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1785, 1786, 1787, 1788, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. In appendix B to part 701, in the glossary, revise the definition of ''in danger of insolvency'' to read as follows:

[13] Public Law 105–277, 112 Stat. 2681 (1998).

Appendix B to Part 701—Chartering and Field of Membership Manual

* * * * *

In danger of insolvency—In making the determination that a particular credit union is in danger of insolvency, NCUA will establish that the credit union falls into one or more of the following categories:

1. The credit union's net worth is declining at a rate that will render it insolvent within 30 months. In projecting future net worth, NCUA may rely on data in addition to Call Report data. The trend must be supported by at least 12 months of historic data.

2. The credit union's net worth is declining at a rate that will take it under two percent (2%) net worth within 18 months. In projecting future net worth, NCUA may rely on data in addition to Call Report data. The trend must be supported by at least 12 months of historic data.

3. The credit union's net worth, as self-reported on its Call Report, is significantly undercapitalized, and NCUA determines that there is no reasonable prospect of the credit union becoming adequately capitalized in the succeeding 36 months. In making its determination on the prospect of achieving adequate capitalization, NCUA will assume that, if adverse economic conditions are affecting the value of the credit union's assets and liabilities, including property values and loan delinquencies related to unemployment, these adverse conditions will not further deteriorate.

4. The credit union has been granted or received assistance under section 208 of the Federal Credit Union Act, 12 U.S.C. 1788, in the 15 months prior to the Region's determination that the credit union is in danger of insolvency.

* * * * *

[FR Doc. 2017–27410 Filed 12–19–17; 8:45 am]

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 705, 708a, 708b, and 790

RIN 3133–AE81

Agency Reorganization

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (''Board'') is issuing a final rule to implement certain features of the NCUA reorganization that the Board announced earlier this year. This rule amends the NCUA's regulations related to the organization of the NCUA's Central Office.

DATES: This rule is effective January 6, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Wirick, Senior Staff Attorney,