

1 **7535-01-U**

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3 **NATIONAL CREDIT UNION ADMINISTRATION**

4

5 **12 CFR Part 702**

6

7 **NCUA-2022-0005**

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9 **RIN 3133-AF19**

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11 **Prompt Corrective Action: Earnings Retention Waivers and Net Worth Restoration Plans**

12

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

14

15 **ACTION:** Interim final rule.

16

17 **SUMMARY:** The NCUA Board (Board) is extending two temporary changes to its prompt
18 corrective action (PCA) regulations to help ensure that federally insured credit unions (FICUs)
19 remain operational and liquid during the COVID-19 crisis. The first amends these regulations to
20 temporarily extend the Board's ability to issue an order applicable to all FICUs to waive the
21 earnings retention requirement for any FICU that is classified as adequately capitalized. The
22 second extends a provision that modifies the specific documentation required for net worth
23 restoration plans (NWRPs) for FICUs that become undercapitalized. These temporary

24 modifications will remain in place until March 31, 2023. This rule is substantially similar to an
25 interim final rule that the Board published on April 19, 2021.

26

27 **DATES:** This rule is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL*
28 *REGISTER*]. Comments must be received on or before [INSERT DATE 60 DAYS FROM
29 DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

30

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

- 33 • Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for
34 submitting comments for Docket # NCUA-2022-0055.
- 35 • Fax: (703) 518-6319. Include “[Your Name]—Comments on “Prompt Corrective Action:
36 Earnings Retention Waivers and Net Worth Restoration Plans” in the transmittal.
- 37 • Mail: Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit
38 Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- 39 • Hand Delivery/Courier: Same as mail address.

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

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

48

49 **FOR FURTHER INFORMATION CONTACT:** *Policy and Analysis:* Kathryn Metzker, Risk
50 Officer, or Victoria Nahrwold, Associate Director, Office of Examination and Insurance, at (703)
51 518-6360; *Legal:* Marvin Shaw, Senior Staff Attorney and Thomas Zells, Senior Staff Attorney,
52 Office of General Counsel, at (703) 518-6540; or by mail at: National Credit Union
53 Administration, 1775 Duke Street, Alexandria, Virginia 22314.

54

55 **SUPPLEMENTARY INFORMATION**

56 **I. Legal Authority**

57 The Board is issuing this interim final rule pursuant to its authority under the Federal
58 Credit Union Act.¹ The Act grants the Board a broad mandate to issue regulations that govern
59 both federal credit unions and, more generally, all FICUs. For example, Section 120 of the Act is
60 a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations
61 for the administration of the Act.² Section 209 of the Act is a plenary grant of regulatory
62 authority to issue rules and regulations necessary or appropriate for the Board to carry out its role
63 as share insurer for all FICUs.³ Other provisions of the Act confer specific rulemaking authority

¹ 12 U.S.C. 1751 *et seq.*

² 12 U.S.C. 1766(a).

³ 12 U.S.C. 1789.

64 to address prescribed issues or circumstances.⁴ Such specific rulemaking authority is set forth in
65 Section 216(b) about PCA.⁵

66

67 **II. Prompt Corrective Action Background**

68 A. Statutory Provisions

69 In 1998, Congress enacted the Credit Union Membership Access Act (“CUMAA”).⁶
70 CUMAA amended the Federal Credit Union Act (“the Act”) to require the NCUA to adopt, by
71 regulation, a system of PCA consisting of minimum capital standards and corresponding
72 remedies to improve the net worth of federally-insured “natural person” credit unions.⁷ The
73 purpose of PCA is to “resolve the problems of insured credit unions at the least possible long-
74 term loss to the [National Credit Union Share Insurance Fund (‘NCUSIF’)].”⁸ The PCA section
75 of the Act does not apply to corporate credit unions.⁹

76 The statute designated three principal components of PCA: (1) A framework combining
77 mandatory actions prescribed by statute with discretionary actions developed by the NCUA; (2)
78 an alternative system of PCA to be developed by the NCUA for FICUs which CUMAA defines
79 as “new;” and (3) a risk-based net worth requirement to apply to FICUs which the NCUA
80 defines as “complex.” Besides those FICUs that meet the statutory definition of a “new” FICU,
81 CUMAA mandated a framework of mandatory and discretionary supervisory actions indexed to
82 five statutory net worth categories. These categories are: “well capitalized,” “adequately

⁴ An example of a provision of the Act that provides the Board with specific rulemaking authority is Section 207 (12 U.S.C. 1787), which is a specific grant of authority over share insurance coverage, conservatorships, and liquidations.

⁵ 12 U.S.C. 1790d(b).

⁶ Pub. L. 105-219, 112 Stat. 913 (1998).

⁷ 12 U.S.C. 1790d *et seq.*

⁸ 12 U.S.C. 1790d(a)(1).

⁹ 12 U.S.C. 1790d(m). Part 704, which this rulemaking does not affect, applies capital and PCA requirements to corporate credit unions.

83 capitalized,” “undercapitalized,” “significantly undercapitalized,” and “critically
84 undercapitalized.” The mandatory actions and conditions triggering conservatorship and
85 liquidation are expressly prescribed by statute.¹⁰ To supplement the mandatory actions, the
86 statute directed the NCUA to develop discretionary actions which are “comparable” to the
87 “discretionary safeguards” available under Section 38 of the Federal Deposit Insurance Act,
88 which is the statute that applies PCA to other federally-insured depository institutions.¹¹

89 The Act addresses the earnings retention requirement applicable to FICUs that are not well
90 capitalized.¹² Such FICUs are required to annually set aside as net worth an amount equal to not
91 less than 0.4 percent of their total assets.¹³ The Board has the authority to decrease the earnings
92 retention requirement.¹⁴ To do this, the Board may issue an order if it determines that the
93 decrease is necessary to avoid a significant redemption of shares and further the purpose of that
94 PCA provision of the Act. The Act also requires the Board to periodically review any order
95 issued under that section.¹⁵

96 Separately, the Act sets forth requirements related to NWRPs, which FICUs must submit to
97 the NCUA when it becomes undercapitalized.¹⁶ The regulatory provisions addressing the
98 procedures and documentation requirements for NWRPs are codified at 12 CFR 702.111 and are
99 detailed below.

100 B. Regulatory Provisions

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

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

¹² 12 U.S.C. 1790d(e).

¹³ 12 U.S.C. 1790d(e)(1).

¹⁴ 12 U.S.C. 1790d(e)(2).

¹⁵ 12 U.S.C. 1790d(e)(2)(B).

¹⁶ 12 U.S.C. 1790d(f).

101 In February 2000, the Board adopted part 702 and subpart L of part 747 establishing a
102 comprehensive system of PCA that combines mandatory supervisory actions prescribed by the
103 statute with discretionary supervisory actions developed by the NCUA (2000 final rule).¹⁷ Each
104 of these supervisory actions is indexed to the five statutory net worth categories noted above.
105 The 2000 final rule also permits the NCUA to impose “other action to better carry out the
106 purpose of PCA” than any discretionary supervisory action available in that category.¹⁸ In the
107 proposal that provided the basis for the 2000 final rule, the Board noted that “Part 702 also
108 amplifies the terms of the statutory exception to the 0.4 percent minimum set aside. Specifically,
109 the Board stated that it interprets the phrase *by order* to indicate that exceptions to the 0.4 percent
110 statutory minimum are to be granted on a case-by-case basis.”¹⁹ But the Board revisited this
111 interpretation in the May 2020 interim final rule on this subject, finding that the Act does not
112 require FICUs to send a specific application or the NCUA to issue individual orders for each
113 FICU.²⁰ The Board also notes that the current, specific requirements on earnings retention
114 waivers are based on a regulatory provision rather than a specific statutory directive.²¹ Thus,
115 issuing a broadly applicable order is consistent with the overall statutory structure of PCA, which
116 combines both mandatory and discretionary provisions. During the COVID-19 pandemic, many
117 FICUs have broadly faced similar economic circumstances that affect net worth and earnings.
118 Given these experiences, and the potential for similar volatility and uncertainty in the future, the
119 Board has determined it is appropriate to implement the changes in this rule to extend the

¹⁷ 65 FR 8560 (Feb. 18, 2000).

¹⁸ 12 CFR 702.107(b)(9), which applies to undercapitalized FICUs.

¹⁹ 64 FR 27090 (May 18, 1999).

²⁰ 85 FR 31952, 31954 (May 28, 2020).

²¹ The Board notes that 12 U.S.C. 1790d(e)(1) requires earnings retention. However, additional provisions in 12 CFR part 702, including those related to timing and the content of the application, supplement this statutory provision.

120 provisions that authorize a broadly applicable order to decrease the earnings-retention
121 requirements for multiple FICUs and to allow a streamlined NWRP in certain circumstances.

122 **III. Recent Interim Final Rules**

123 A. May 2020 Interim Final Rule

124 On May 21, 2020, the Board approved an interim final rule that temporarily amended two
125 provisions in the PCA regulations in part 702.²² The first amendment addressed the earnings
126 retention requirement in §702.201 for FICUs classified as adequately capitalized.²³ The second
127 amendment addressed the NWRPs for FICUs in §702.206(c) that have become
128 undercapitalized.²⁴

129 The May 2020 interim final rule was issued in response to the COVID-19 pandemic and
130 sought to ensure that FICUs continue to operate efficiently, to ensure that FICUs maintain
131 sufficient liquidity, and to account for the potential temporary increase in shares that FICUs may
132 experience during the COVID-19 pandemic. Specifically, the Board believed the temporary
133 amendments in the interim final rule would allow FICUs to better utilize resources by reducing
134 the administrative burden associated with a temporary increase in shares. The Board concluded
135 that the amendments would provide FICUs with necessary additional flexibility in a manner
136 consistent with the NCUA's responsibility to maintain the safety and soundness of the credit
137 union system. The Board made the temporary amendments effective upon publication and

²² 85 FR 31952 (May 28, 2020).

²³ As detailed subsequently in this preamble, the NCUA's 2015 final rule on risk-based capital went into effect on January 1, 2022, and amended certain provisions in part 702. As a result, the earnings retention requirement in §702.201 was moved to §702.106. Accordingly, this interim final rule implements the amendment made by the 2020 and 2021 PCA interim final rules to §702.201 in §702.106.

²⁴ As detailed subsequently in this preamble, the NCUA's 2015 final rule on risk-based capital went into effect on January 1, 2022, and amended certain provisions in part 702. As a result, the requirements for NWRPs in §702.206(c) were moved to §702.111(c). Accordingly, this interim final rule implements the amendment made by the 2020 and 2021 PCA interim final rules to §702.206(c) in current §702.111(c).

138 specified that they would remain in place through the end of calendar year 2020. The Board
139 sought comment on the interim final rule.

140 On June 5, 2020, pursuant to the changes made by the May 2020 interim final rule, the
141 Board issued a temporary order decreasing the earnings retention requirement.²⁵ Specifically, the
142 Board determined that, due to economic circumstances caused by the COVID-19 pandemic,
143 decreasing the earnings retention requirements set forth in the NCUA’s regulations was
144 necessary to avoid a significant redemption of shares. This action would further the purposes of
145 the PCA regulations. Accordingly, the Board ordered that any consumer FICU whose net worth
146 classification, as defined in part 702 of the NCUA’s regulations, was adequately capitalized
147 between March 31, 2020, and December 31, 2020, could decrease its earnings retention
148 requirement to zero as set forth in part 702. The order was effective through and including
149 December 31, 2020.²⁶

150 As noted, the Board solicited comment on the May 2020 interim final rule. The Board
151 received comments from a credit union trade association, two state credit union leagues, and an
152 organization of state credit union supervisors. All commenters supported the interim final rule,
153 and no commenter opposed it. All commenters stated that the changes were appropriate, noting
154 that they provided regulatory relief and flexibility to credit unions to manage their liquidity and
155 address financial hardships caused by COVID-19.

156 The interim final rule’s two provisions expired on December 31, 2020. All commenters
157 requested that the temporary amendments be extended or made permanent. One commenter

²⁵ <https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/temporary-order-decreasing-earnings-retention-requirement>.

²⁶ 12 CFR 702.301. The term consumer FICU is being used instead of the term natural person FICU. This terminology is being used for clarity, however, the term natural person FICU will continue to be used for the accompanying regulatory text changes for consistency with other sections of the NCUA’s regulations.

158 stated that if the economic dislocation caused by the pandemic lingers, the regulatory relief may
159 be necessary beyond the end of 2020. Among the recommendations to extend the effective date
160 were: (1) making the rule permanent; (2) extending the applicability until the COVID-19
161 pandemic was declared over by the Center for Disease Control or other Federal agency; or (3)
162 making the end date December 31, 2021.

163 B. April 2021 Interim Final Rule

164 Based on information available in December 2020, the Board did not extend these
165 provisions but continued to consider this issue. In light of new facts and circumstances, the
166 Board subsequently determined in April 2021 that it was appropriate to reinstate these
167 amendments to the PCA regulations in part 702 on a temporary basis.²⁷ Specifically, based on
168 the enactment of the American Rescue Plan Act of 2021²⁸ to provide direct financial relief to
169 individual taxpayers, the Board expected that credit unions would receive a significant increase
170 in deposits due to stimulus checks. Accordingly, the Board determined that it was appropriate to
171 reinstitute the changes to the PCA provisions that had been adopted in May 2020. The Board
172 also sought comments in the April 2021 interim final rule.

173 The NCUA received seven substantive comments in response to the interim final rule, all
174 of which offered support. Commenters stated that the interim final rule provides assistance to
175 FICUs that have experienced pandemic-related hardships; reduces regulatory burden; does not
176 unduly increase risk to the NCUSIF; allows otherwise healthy FICUs to focus on serving
177 members without discouraging deposits; provides FICUs and the NCUA flexibility during a time
178 of unprecedented deposit growth; and helps ensure the relief is available throughout the

²⁷ 86 FR 20258 (Apr. 19, 2021).

²⁸ Pub. L. 117-2 (Mar. 11, 2021).

179 pandemic and resulting economic turbulence. Commenters also addressed the duration of the
180 extension, requesting that the termination date either be extended beyond March 31, 2022, or be
181 made permanent.

182 C. This Interim Final Rule

183 As noted above, the two temporary PCA-related provisions are set to expire on March 31,
184 2022. Based on the agency's experience and lessons learned during the last two years as well as
185 the ongoing economic fallout related to the COVID-19 pandemic, the Board has determined that
186 it is appropriate to issue another interim final rule to extend these provisions until March 31,
187 2023. Share growth remains unusually high compared to pre-pandemic levels. Specifically, share
188 growth from September 30, 2020, to September 30, 2021, exceeded 14 percent.²⁹ The COVID-
189 19 pandemic and Congressional responses to it were the initial impetus for the two previous
190 interim final rules that temporarily amended the two PCA provisions. While the environment that
191 precipitated these temporary amendments has evolved, substantial uncertainties about the
192 continued impact of the pandemic and the evolving economic environment remain.
193 Macroeconomic uncertainty has been particularly significant over the last few months. Inflation,
194 geopolitical tensions, and a new COVID-19 variant have introduced new economic challenges.
195 Ultimately, the combined effects of these factors on share growth and net worth ratios could be
196 quite significant, leading to potentially greater volatility in those measures in the year ahead.

197 Also, the flexibilities provided by these temporary amendments have proven to benefit
198 both the NCUA and FICUs. The Board believes the agency can use these flexibilities judiciously
199 to address challenges posed by the current environment and potential issues that may arise while

²⁹ Average annual share growth in the 10 years preceding the pandemic was only 5.8 percent.

200 the rule remains in effect without imposing any additional safety and soundness risk.
201 Accordingly, the Board believes it is appropriate to extend these provisions until March 31,
202 2023. The Board requests comments on all aspects of this interim final rule.

203 The Board notes that this interim final rule incorporates new amendatory language given
204 that the agency’s 2015 final rule on risk-based capital amended certain provisions in part 702.³⁰
205 Specifically, that final rule amended part 702 by removing §§ 702.201 and 702.206 and moving
206 them, mostly unchanged, to new §§ 702.106 and 702.111. As a result, the current regulatory text
207 does not reflect the April 2021 interim final rule. Because the Board is extending this authority, it
208 is revising the affected provisions to include these authorities to run from the effective date of
209 this interim final rule until March 31, 2023, to ensure there is no interruption in the flexibility.

210 **IV. Section-by-Section Analysis**

211 *A. Section 702.106 — Earnings retention requirement for “adequately capitalized” FICUs*

212 A FICU that is classified as “adequately capitalized” or lower must increase the dollar
213 amount of its net worth quarterly by an amount equivalent to at least 1/10th of a percent of its
214 total assets and must retain at least that amount (for a total of 0.4 percent annually) every quarter
215 until it is “well capitalized.”³¹ The purpose of this provision is to restore a FICU that is less than
216 well capitalized to a well-capitalized position in an incremental manner. The Board notes that
217 newly chartered FICUs are excluded from this relief given that the relief is intended for FCUs
218 experiencing growth as a result of the COVID-19 pandemic.

219 As discussed previously, current §702.106 provides that the Board may waive this
220 requirement on a case-by-case basis upon application by an affected FICU. The Act provides

³⁰ 80 FR 66626 (Oct. 29, 2015)

³¹ This relief is provided for FICUs that are required to retain earnings under §§ 702.106, 702.107, 702.108, and 702.109.

221 broader authority for the Board to issue an order to waive this requirement and does not require
222 an application or individual orders.³² In response to recent economic conditions, there were
223 previous infusions of stimulus funds and an increased propensity for consumers to save due to
224 the variety of pandemic-related circumstances. Thus, the Board has determined that it is
225 appropriate to extend its decision to amend §702.106 temporarily to provide express regulatory
226 authority for the Board to issue a single order waiving the earnings retention requirement for all
227 FICUs that are classified as adequately capitalized during this time. As with the previous orders
228 issued under the May 2020 and April 2021 interim final rules, the Board would provide in the
229 order that the applicable Regional Director has authority to subsequently require an application if
230 a particular FICU poses undue risk to the NCUSIF or exhibits material safety and soundness
231 concerns. Extending this regulatory provision will allow the Board to respond to circumstances
232 broadly affecting many FICUs with a single issuance rather than numerous individual waiver
233 approvals. This provision will expire on March 31, 2023.

234 In a separate action that will be published on the NCUA website after this interim final rule
235 becomes effective, the Board intends to issue the order described above, which will be applicable
236 to adequately capitalized FICUs and will grant relief from the earnings retention requirement
237 without requiring those FICUs to submit applications and receive individual waiver approvals,
238 subject to the qualification noted above.

239 The Board is exercising this authority under 12 U.S.C. 1790d(e)(2) to enhance flexibility in
240 the application of the earnings retention requirement. The Board believes that this relief remains
241 necessary to avoid a reduction of shares and thus retain system liquidity and capital adequacy,

³² See 1 U.S.C. 1 (providing that unless context indicates otherwise, words importing the singular also apply to several persons or parties).

242 thereby furthering the purpose of PCA. Economic uncertainty caused by the COVID-19
243 pandemic and its effect on the economy have resulted in significant asset growth within the
244 credit union industry. This growth may impact the PCA classification of many credit unions,
245 resulting in an increased number of credit unions being subject to the earnings retention
246 requirement. Based on the September 30, 2021, Call Report, 223 credit unions are classified as
247 less than well capitalized and are thus subject to the earnings retention requirement. Of those, 42
248 percent report negative earnings as of September 30, 2021. With continued uncertainty caused by
249 the COVID-19 pandemic, the credit union system continues to experience the effects of
250 pandemic-related share growth and additional credit unions may be subjected to the earnings
251 retention requirement. A comparison of Call Report data from March 31, 2020, to September 30,
252 2021, reveals 101 credit unions experienced a decline in their PCA classification from “well
253 capitalized” to “adequately capitalized” from March 31, 2020, despite having reported a positive
254 return on average assets in September 2021. This illustrates the continued impact of the flight to
255 safety experienced by the industry.

256 Specifically, during the time period that the two interim final rules have been effective,
257 the Board issued orders providing that any consumer FICU that had a net worth classification, as
258 defined in part 702 of the NCUA’s regulations, of adequately capitalized could decrease its
259 earnings-retention requirement to zero as set forth in part 702. These orders enabled FICUs to
260 better utilize resources by eliminating the need to request a waiver of the earnings-retention
261 requirement from their Regional Director. While the interim final rules and earnings-retention
262 orders have been in effect, the number of FICUs that benefitted from this relief has varied from
263 an estimated 77 FICUs as of June 2020 to as many as 179 as of June 30, 2021, based on Call
264 Report data. The FICUs benefitting from the earnings-retention requirement reduction have

265 assets representing less than one percent of industry assets as of September 30, 2021.
266 Accordingly, the Board believes that this amendment and the implementing orders have not
267 posed an undue risk to the NCUSIF.

268 The Board further notes that FICU operations continue to be significantly disrupted due to
269 social distancing practices, remote work, supply chain disruption, and related complications.
270 Also, the unprecedented amount of fiscal stimulus and decreased spending opportunities have led
271 to a significant increase in the personal saving rate over the last two years. This, in turn, has
272 resulted in extraordinary share growth, leaving net worth ratios artificially depressed.

273 Given current macroeconomic conditions, downward pressure on net worth ratios will likely
274 persist in the coming year. Although consumer spending has rebounded somewhat, the amount
275 of excess savings—the accumulation of savings over and above pre-pandemic levels—remains
276 significant and is not likely to abate any time soon. Consumer spending on services—the most
277 significant share of expenditures—continues to lag, as the pandemic is resulting in consumers
278 spending less on travel and other activities that are highly social and could potentially expose
279 them to COVID-19. Also, strong gains in employment are supporting incomes and certain loan
280 forbearance programs—which decrease debt service payments—still remain in effect.

281 By avoiding the need for numerous waiver applications and responses, the simplified
282 procedure that this interim final rule extends will reduce the administrative burden on FICUs and
283 the NCUA. The Board notes qualifications in the planned order regarding FICUs that pose undue
284 risk or material safety and soundness concerns will help ensure that the purposes of PCA are
285 maintained during this time.

286 *B. Section 702.111 — NWRPs; Contents of NWRP*

287 As for NWRPs, the Act provides a broad directive that a FICU that is less than
288 adequately capitalized must submit an applicable NWRP to the NCUA. The NCUA, by
289 regulation, has provided additional details to supplement this statutory provision. Section
290 702.111(a) of the NCUA's regulations specifies the schedule for filing the plan, and §702.111(c)
291 of the NCUA's regulations outlines the contents of a NWRP.

292 The Board has decided that it is appropriate to continue waiving the NWRP content
293 requirements for FICUs that become classified as undercapitalized predominantly as a result of
294 share growth for Call Reports filed for the periods effective March 31, 2022, June 30, 2022,
295 September 30, 2022, and December 31, 2022. In these cases, the FICU may submit a
296 significantly simpler NWRP to the applicable Regional Director noting that the FICU's PCA
297 classification fell to undercapitalized because of share growth. Specifically, a FICU would be
298 required to attest that its reduction in capital was caused by share growth and that such share
299 growth is a temporary condition due to the COVID-19 pandemic. Federally insured, state-
300 chartered credit unions must comply with applicable state requirements when submitting
301 NWRPs for state supervisory authority approval.

302 When reviewing NWRPs submitted under this authority, the Regional Director will
303 determine if the decrease in the net worth ratio was predominantly a result of share growth. To
304 assess the reason for the decrease, the Regional Director will analyze the numerator and
305 denominator of the net worth ratio. If there is no change, or if there is an increase in the
306 numerator and an increase in the denominator, this would indicate that the decrease in the net
307 worth ratio was due to share growth. If there is an increase in the denominator and a decrease in
308 the numerator, the Regional Director will analyze whether the decrease in the numerator would
309 have caused the FICU to fall to a lower net worth classification if there were no change in the

310 denominator. If so, the FICU's net worth decline would not be predominantly due to share
311 growth, and thus the FICU would not be eligible to submit a streamlined NWRP.

312 The Board has determined it is appropriate to extend this regulatory flexibility for NWRPs
313 given the continued economic disruption and the corresponding uncertainty caused by the
314 COVID-19 pandemic.

315 Since the Board published the interim final rule on May 28, 2020, permitting FICUs that
316 become classified as undercapitalized as a result of share growth to submit a streamlined NWRP,
317 fourteen credit unions have submitted such streamlined NWRPs. Of the fourteen streamlined
318 NWRPs submitted, nine NWRPs were approved, and five streamlined NWRPs were denied. The
319 denials of the streamlined NWRPs were based on those FICUs' decline in PCA classification
320 being the result of other economic factors, and not predominantly the result of share growth.
321 Further, the Board notes that the FICUs submitting streamlined NWRPs were generally smaller,
322 or non-complex credit unions, thus presenting limited risk to the NCUSIF.

323 Based on September 30, 2021, Call Report data, 59 FICUs would require a NWRP to be
324 in place or be submitted for approval based on their PCA classification. This is an increase of
325 over 22 percent from the 48 credit unions required to have a NWRP to be in place or be
326 submitted for approval based on December 31, 2020, Call Report data, illustrating an upward
327 trend.

328 The streamlined NWRP will provide sufficient information, based on current economic
329 conditions, to determine if the credit union is prepared to manage the volatility associated with
330 the COVID-19 pandemic and the impact on the FICU's financial and operational position.

331 As it concluded in the April 2021 interim final rule, the Board continues to believe it can
332 fulfill its statutory duty to evaluate the NWRPs even if the plans are more concise and

333 streamlined than plans submitted before the COVID-19 pandemic. Such a streamlined approach
 334 is acceptable because the more extensive information required under the current requirements
 335 may not be practicable or useful under the current situation. The Board believes it can determine
 336 if a plan is acceptable even if it lacks some of the detailed submissions that the permanent
 337 regulatory provision requires.

338 A FICU’s eligibility to submit a streamlined NWRP to the NCUA will be determined
 339 based on the effective date of the credit union’s PCA classification, as defined in part 702 of the
 340 NCUA’s regulations.³³ The streamlined NWRP will apply on a case-by-case basis to FICUs that
 341 become classified as undercapitalized (those that have a net worth ratio of 4 percent to
 342 5.99 percent) predominantly as a result of share growth. To further clarify, a FICU that has a
 343 declined PCA classification will be permitted to submit a streamlined NWRP as reflected in the
 344 following table.

Call Report Effective Date	PCA Classification Date	Streamlined NWRP Permissible
March 31, 2022	April 30, 2022	Yes
June 30, 2022	July 30, 2022	Yes
September 30, 2022	October 31, 2022	Yes
December 31, 2022	January 30, 2023	Yes
March 31, 2023	April 30, 2023	No

345

346 **V. Regulatory Procedures**

347 *A. Administrative Procedure Act*

³³ 12 CFR Part 702.

348 The Board is issuing the interim final rule without prior notice and the opportunity for
349 public comment and the delayed effective date ordinarily prescribed by the Administrative
350 Procedure Act (APA).³⁴ Pursuant to the APA, general notice and the opportunity for public
351 comment are not required about a rulemaking when an “agency for good cause finds (and
352 incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice
353 and public procedure thereon are impracticable, unnecessary, or contrary to the public
354 interest.”³⁵

355 The Board believes the public interest is best served by implementing the interim final
356 rule immediately upon publication in the *Federal Register*. The Board notes that the economic
357 disruption caused by the COVID-19 pandemic is unprecedented. Even after nearly two years, the
358 situation continues to evolve, thereby making it difficult to anticipate how pandemic-induced
359 disruptions will manifest themselves within the financial system and how individual FICUs may
360 be impacted. The continued relief measures, including the most recent infrastructure legislation,
361 combined with the flight to safety and reduced spending, places a strain on FICU net worth. To
362 disrupt or end the regulatory relief in place would conflict with preserving the safety and
363 soundness of the industry. Because the unprecedented expansionary monetary and fiscal policies,
364 combined with precautionary savings, is placing a strain on FICU net worth, the Board believes
365 it has good cause to determine that ordinary notice and public procedure are impracticable and
366 that moving expeditiously in the form of an interim final rule is in the public’s best interests and
367 the FICUs that serve that public. The temporary regulatory changes are necessary steps designed
368 to alleviate potential liquidity and resource strains including stress on capital adequacy and are

³⁴ 5 U.S.C. 553

³⁵ 5 U.S.C. 553(b)(3).

369 undertaken with expedience to ensure the maximum intended effects are in place at the earliest
370 opportunity.

371 The Board values public input in its rulemakings and, to that end, believes that
372 regulations are enhanced when the public has the opportunity to comment. Accordingly, the
373 Board is soliciting comments on this interim final rule. The amendments made by the interim
374 final rule will automatically expire on March 31, 2023, and are limited in number and scope. For
375 these reasons, the Board finds there is good cause consistent with the public interest to issue the
376 rule without advance notice and comment.

377 The APA also requires a 30-day delayed effective date, except for (1) substantive rules
378 which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and
379 statements of policy; or (3) as otherwise provided by the agency for good cause.³⁶ Because the
380 rule relieves currently codified limitations and restrictions, the interim final rule is exempt from
381 the APA's delayed effective date requirement. As an alternative to making the rule effective
382 without the 30-day delayed effective date, the Board finds there is good cause to do so for the
383 same reasons set forth above regarding advance notice and opportunity for comment.

384 *B. Congressional Review Act.*

385 For purposes of the Congressional Review Act (CRA),³⁷ the Office of Management and
386 Budget (OMB) decides whether a final rule constitutes a “major” rule. If the OMB deems a rule
387 to be “major,” the CRA generally provides that the rule may not take effect until at least 60 days
388 following its publication.

³⁶ 5 U.S.C. 553(d).

³⁷ 5 U.S.C. 801-808.

389 The CRA defines a “major rule” as any rule that the Administrator of the OMB’s Office
390 of Information and Regulatory Affairs finds has resulted in, or is likely to result in, (A) an annual
391 effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for
392 consumers, individual industries, Federal, State, or local government agencies or geographic
393 regions; or (C) significant adverse effects on competition, employment, investment, productivity,
394 innovation, or on the ability of United States-based enterprises to compete with foreign-based
395 enterprises in domestic and export markets.³⁸

396 For the same reasons noted above, the Board is adopting the interim final rule without the
397 delayed effective date generally prescribed under the CRA. The delayed effective date required
398 by the CRA does not apply to any rule for which an agency for good cause finds (and
399 incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice
400 and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.³⁹
401 In light of current market uncertainty, the Board believes that delaying the effective date of the
402 rule would be contrary to the public interest for the same reasons discussed above.

403 As required by the CRA, the Board will submit the final rule and other appropriate
404 reports to Congress and the Government Accountability Office for review.

405 *C. Paperwork Reduction Act*

406 The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires OMB to approve
407 all collections of information by a Federal agency from the public before they can be
408 implemented. Respondents are not required to respond to any collection of information unless it
409 displays a valid OMB control number. The information collection requirements prescribed by the

³⁸ 5 U.S.C. 804(2).

³⁹ 5 U.S.C. 808.

410 May 2020 interim final rule under PCA remains in effect and are cleared under OMB control
411 number 3133-0154.

412 *D. Executive Order 13132*

413 Executive Order 13132⁴⁰ encourages independent regulatory agencies to consider the
414 impact of their actions on state and local interests. The NCUA, an independent regulatory
415 agency, as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive order to adhere
416 to fundamental federalism principles. The interim final rule will not have substantial direct
417 effects on the states, on the relationship between the National Government and the states, or on
418 the distribution of power and responsibilities among the various levels of government. The Board
419 has thus determined that this rule does not constitute a policy that has federalism implications for
420 purposes of the Executive order. But the Board notes that it has consulted with state regulators,
421 as described in the PCA section of the Act, and will continue to do so during the comment period
422 and implementation of this interim final rule.⁴¹

423 *E. Assessment of Federal Regulations and Policies on Families*

424 The NCUA has determined that this interim final rule will not affect family well-being
425 within the meaning of Section 654 of the Treasury and General Government Appropriations Act,
426 1999.⁴²

427 *F. Regulatory Flexibility Act*

428 The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a
429 proposed rule or a final rule pursuant to the APA⁴³ or another law, the agency must prepare a

⁴⁰ Executive Order 13132 on Federalism was signed by former President Clinton on August 4, 1999, and subsequently published in the *Federal Register* on August 10, 1999 (64 FR 43255).

⁴¹ 12 U.S.C. 1790d(I).

⁴² Public Law 105-277, 112 Stat. 2681 (1998).

⁴³ 5 U.S.C. 553(b).

430 regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis
431 in the *Federal Register*.⁴⁴ Specifically, the RFA normally requires agencies to describe the
432 impact of a rulemaking on small entities by providing a regulatory impact analysis. For purposes
433 of the RFA, the Board considers FICUs with assets less than \$100 million to be small entities.⁴⁵

434 As discussed previously, consistent with the APA,⁴⁶ the Board has determined for good
435 cause that general notice and opportunity for public comment is unnecessary, and thus, the Board
436 is not issuing a notice of proposed rulemaking. Rules that are exempt from notice and comment
437 procedures are also exempt from the RFA requirements, including conducting a regulatory
438 flexibility analysis, when among other things the agency for good cause finds that notice and
439 public procedure are impracticable, unnecessary, or contrary to the public interest. Accordingly,
440 the Board has concluded that the RFA's requirements relating to initial and final regulatory
441 flexibility analysis do not apply.

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

444

445 **List of Subjects in 12 CFR Part 702**

446 Credit unions, Reporting and recordkeeping requirements.

447

448 By the NCUA Board, this 17th day of February 2022

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Melane Conyers-Ausbrooks

⁴⁴ 5 U.S.C. 603, 604.

⁴⁵ NCUA IRPS 15-1. 80 FR 57512 (Sept. 24, 2015).

⁴⁶ 5 U.S.C. 553(b)(3)(B).

Secretary of the Board

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455

456 For the reasons set forth in the preamble, the Board is amending 12 CFR part 702 as
457 follows:

458 PART 702—CAPITAL ADEQUACY

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

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

461 2. Amend § 702.106 by redesignating paragraphs (b)(1) and (2) as paragraphs (b)(1)(i)
462 and (ii), respectively, and adding a new paragraph (b)(2) to read as follows:

463 **§ 702.106 Prompt corrective action for “adequately capitalized” credit unions.**

464 * * * * *

465 (b) * * *

466 (2) Notwithstanding paragraph (a) of this section, from [INSERT DATE OF
467 PUBLICATION IN THE *FEDERAL REGISTER*] until March 31, 2023, for a credit union that is
468 adequately capitalized:

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

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

473 (B) Would further the purpose of this part.

474 (ii) Despite the issuance of an administrative order under paragraph (b)(2) of the section, the
475 Regional Director may require a credit union to submit an earnings retention waiver under
476 paragraph (b)(1) if the credit union poses an undue risk the National Credit Union Share
477 Insurance Fund or exhibits material safety and soundness concerns.

478 * * * * *

479 3. Amend § 702.111 by adding paragraph (c)(4) to read as follows:

480 **§ 702.111 Net worth restoration plans.**

481 * * * * *

482 (c) * * *

483 (4) Notwithstanding paragraphs (c)(1), (2), and (3) of this section, the Board may permit
484 a credit union that is undercapitalized to submit to the Regional Director a streamlined NWRP
485 attesting that its reduction in capital was caused by share growth and that such share growth is a
486 temporary condition due to the COVID-19 pandemic. A streamlined NWRP plan may be
487 accepted from [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] until
488 March 31, 2023.

489 * * * * *

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