

7535-01-U

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 702**

**[NCUA-2021-0046]**

**RIN 3133-AF19**

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

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

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The NCUA Board (Board) is making two temporary changes to its prompt corrective action (PCA) regulations to help ensure that federally insured credit unions (FICUs) remain operational and liquid during the COVID-19 pandemic. The first amends these regulations to temporarily enable the Board to issue an order applicable to all FICUs to waive the earnings-retention requirement for any FICU that is classified as adequately capitalized. The second modifies these regulations with respect to the specific documentation required for net worth restoration plans (NWRPs) for FICUs that become undercapitalized. These temporary

modifications will be in place until March 31, 2022. This rule is substantially similar to an interim final rule that the Board published on May 28, 2020.

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

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

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments for Docket # NCUA-2021-0046.
- Fax: (703) 518-6319. Include “[Your Name]—Comments on Temporary Regulatory Relief Rule in Response to COVID-19—Prompt Corrective Action” in the transmittal.
- Mail/hand delivery/courier: Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

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

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

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

## **SUPPLEMENTARY INFORMATION**

### **I. Legal Authority**

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

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<sup>1</sup> 12 U.S.C. 1751 *et seq.*

<sup>2</sup> 12 U.S.C. 1766(a).

<sup>3</sup> 12 U.S.C. 1789.

rulemaking authority to address prescribed issues or circumstances.<sup>4</sup> Such specific rulemaking authority is set forth in section 216(b) with respect to PCA.<sup>5</sup>

## II. Prompt Corrective Action Background

### A. Statutory Provisions

In 1998, Congress enacted the Credit Union Membership Access Act (“CUMAA”).<sup>6</sup> The CUMAA amended the Federal Credit Union Act (“the Act”) to require the NCUA to adopt, by regulation, a system of PCA consisting of minimum capital standards and corresponding remedies to improve the net worth of federally insured “natural person” credit unions.<sup>7</sup> The purpose of PCA is to “resolve the problems of insured credit unions at the least possible long-term loss to the [National Credit Union Share Insurance Fund (‘NCUSIF’)].”<sup>8</sup>

The statute designated three principal components of PCA: (1) A framework combining mandatory actions prescribed by statute with discretionary actions developed by the NCUA; (2) an alternative system of PCA to be developed by the NCUA for FICUs which CUMAA defines as “new;” and (3) a risk-based net worth requirement to apply to FICUs which the NCUA defines as “complex.”

For FICUs other than those that meet the statutory definition of a “new” FICU, the CUMAA mandated a framework of mandatory and discretionary supervisory actions indexed to five statutory net worth categories:

1. Well capitalized

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<sup>4</sup> 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.

<sup>5</sup> 12 U.S.C. 1790d(b).

<sup>6</sup> Pub.L. 105-219, 112 Stat. 913 (1998).

<sup>7</sup> 12 U.S.C. 1790d *et seq.*

<sup>8</sup> 12 U.S.C. 1790d(a)(1).

2. Adequately capitalized
3. Undercapitalized
4. Significantly undercapitalized, and
5. Critically undercapitalized

The mandatory actions and conditions that trigger conservatorship and liquidation are expressly prescribed by statute.<sup>9</sup> To supplement the mandatory actions, the statute directed the NCUA to develop discretionary actions which are “comparable” to the “discretionary safeguards” available under section 38 of the Federal Deposit Insurance Act, which is the statute that applies PCA to other federally insured depository institutions.<sup>10</sup>

The Act addresses the earnings-retention requirement applicable to FICUs that are not well capitalized.<sup>11</sup> Such FICUs are required to annually set aside as net worth an amount equal to not less than 0.4% of their total assets.<sup>12</sup> The Board has the authority to decrease the earnings-retention requirement.<sup>13</sup> To accomplish this, the Board may issue an order if it determines the decrease is necessary to avoid a significant redemption of shares and further the purpose of PCA—to resolve the problems of insured credit unions at the least possible long-term cost to the NCUSIF. The Act also requires the Board to periodically review any order that it issues to decrease a FICU’s earnings-retention requirement.<sup>14</sup>

Separately, 12 U.S.C. 1790d(f) sets forth requirements related to NWRPs, which FICUs must submit to the NCUA and which the NCUA must review when a FICU becomes

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<sup>9</sup> 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).

<sup>10</sup> 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, 105<sup>th</sup> Cong; *see also* 12 U.S.C. 1831o (Section 38 of the Federal Deposit Insurance Act setting forth the PCA requirements for banks).

<sup>11</sup> 12 U.S.C. 1790d(e).

<sup>12</sup> 12 U.S.C. 1790d(e)(1).

<sup>13</sup> 12 U.S.C. 1790d(e)(2).

<sup>14</sup> 12 U.S.C. 1790d(e)(2)(B).

undercapitalized. The regulatory provisions that address the procedures and documentation requirements for NWRPs are codified at 12 CFR 702.206 and are detailed below.

## B. Regulatory Provisions

In February 2000, the NCUA Board adopted part 702 and subpart L of part 747, establishing a comprehensive system of PCA that combines mandatory supervisory actions prescribed by the statute with discretionary supervisory actions developed by the NCUA (2000 final rule).<sup>15</sup> Each of these supervisory actions index to the five statutory net worth categories (well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized).

In addition, the 2000 final rule permits the NCUA to impose other action to carry out PCA beyond any discretionary supervisory action available for a particular net worth category.<sup>16</sup> In the proposal that provided the basis for the 2000 final rule, the Board noted that part 702 also amplifies the terms of the statutory exception to the 0.4% minimum set aside. Specifically, the Board stated that it interpreted the phrase *by order* to indicate that exceptions to the 0.4% statutory minimum are to be granted on a case-by-case basis.<sup>17</sup> The Board had historically interpreted these orders on a case-by-case basis. However, given the current economic conditions associated with the COVID-19 pandemic—during which many FICUs broadly face similar circumstances that affect net worth—the Board has determined it is appropriate to implement the changes in this rule to authorize a broadly applicable order to decrease the earnings-retention requirements for multiple FICUs and to allow a streamlined NWRP in certain circumstances.

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<sup>15</sup> 65 FR 8560 (Feb. 18, 2000).

<sup>16</sup> 12 CFR 702.202(b)(9).

<sup>17</sup> 64 FR 27090 (May 18, 1999).

### **III. Temporary Amendments to Earnings Retention and NWRP Provisions**

#### **A. May 2020 Interim Final Rule**

On May 21, 2020, the Board approved an interim final rule that temporarily amended two provisions in the PCA regulations in part 702.<sup>18</sup> The first amendment addressed the earnings-retention requirement in § 702.201 for FICUs classified as adequately capitalized. The second amendment addressed the NWRPs in § 702.206(c) that have become undercapitalized.

The May 2020 interim final rule was issued in response to the COVID-19 pandemic. It sought to ensure that FICUs continued to operate efficiently, to ensure that FICUs maintained sufficient liquidity, and to account for the potential temporary increase in shares that FICUs may experience during the COVID-19 pandemic. Specifically, the Board believed the temporary amendments in the interim final rule would allow FICUs to better utilize resources by reducing the administrative burden associated with a temporary increase in shares.

The Board concluded that the amendments would provide FICUs with necessary additional flexibility in a manner consistent with the NCUA's responsibility to maintain the safety and soundness of the credit union system. The Board made the temporary amendments effective upon publication and specified that they would remain in place through the end of calendar year 2020. The Board sought comment on the interim final rule.

On June 5, 2020, pursuant to the changes made by the May 2020 interim final rule, the Board issued a temporary order decreasing the earnings-retention requirement.<sup>19</sup> Specifically, the Board determined that, in light of the economic circumstances caused by the COVID-19

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<sup>18</sup> 85 FR 31952 (May 28, 2020).

<sup>19</sup> The Order is available on the NCUA website: <https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/temporary-order-decreasing-earnings-retention-requirement>.

pandemic, decreasing the earnings-retention requirements set forth in the NCUA's regulations was necessary to avoid a significant redemption of shares and would further the purposes of the PCA regulations. Accordingly, the Board ordered that any natural-person FICU that had a net worth classification, as defined in part 702 of the NCUA's regulations, of adequately capitalized between March 31, 2020, and December 31, 2020, could decrease its earnings-retention requirement to zero as set forth in part 702. The order was effective through, and including, December 31, 2020.

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

The interim final rule's two provisions expired on December 31, 2020. All commenters requested that the temporary amendments be extended or made permanent. One commenter stated that if the economic dislocation caused by the pandemic lingered, the regulatory relief contemplated in the interim final rule could be necessary beyond December 31, 2020. Among the recommendations to extend the effective date were (1) make the rule permanent, (2) extend the applicability until the COVID-19 pandemic was declared over by the Center for Disease Control or other Federal agency, or (3) make the end date December 31, 2021.

#### B. New Interim Final Rule

Based on limited utilization of the previous relief as of December 2020, the Board did not extend these provisions but continued to consider this issue. Considering information available



following the expiration of the 2020 interim final rule, the Board has determined it is appropriate to readopt these amendments to the PCA regulations in part 702 on a temporary basis.

Specifically, based on the recent congressional action (the American Rescue Plan Act of 2021)<sup>20</sup> to provide direct financial relief to individual taxpayers, the Board anticipates that credit unions will receive a significant increase in deposits due to stimulus checks. Accordingly, the Board has determined it is appropriate to reinstitute the changes to the PCA provisions previously adopted in May 2020.

In 2020, the credit union industry experienced significant asset growth as a result of the COVID-19 pandemic. The Board believes this growth will be temporary. This growth strained the net worth position of credit unions, and negatively impacted many credit unions' PCA classification. Specifically, the credit union industry experienced asset growth—predominantly from share growth—at a rate of 17.73 percent from December 31, 2019, to December 31, 2020. During this same period, the number of FICUs with a PCA classification of adequately capitalized increased by 274 percent, and those classified as undercapitalized increased by 123 percent.<sup>21</sup>

The American Rescue Plan Act is the third in a series of congressional actions to provide taxpayers monetary relief.<sup>22</sup> This action, approved in March 2021, provides relief to individual taxpayers in the form of stimulus payments (referred to as “recovery rebates” in the American Rescue Plan Act). At the time of this action, the previous stimulus payments approved by Congress in December 2020 as part of the Consolidated Appropriations Act of 2021 were still

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<sup>20</sup> Pub. L. 117–2 (Mar. 11, 2021).

<sup>21</sup> Based on December 31, 2020 Call Report Data.

<sup>22</sup> Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116–136 (Mar. 27, 2020); Consolidated Appropriations Act, 2021, Pub. L. 116–260 (Dec. 27, 2020).

being distributed to qualified individuals in the form of stimulus payments.<sup>23</sup> Looking forward, the combination of both stimulus payments will place a continued strain on FICUs' PCA classifications.

### **III. Section-by-Section Analysis**

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

With respect to earnings retention, a FICU that is classified as adequately capitalized or lower must increase the dollar amount of its net worth quarterly by an amount equivalent to at least 1/10<sup>th</sup> of a percent of its total assets and must quarterly transfer at least that amount (for a total of 0.4% annually) from undivided earnings to its regular reserve account every quarter until it is well capitalized.<sup>24</sup> The purpose of this provision is to restore a FICU that is less than well capitalized to a well-capitalized position in an incremental manner.

As discussed previously, § 702.201 currently provides that the Board may waive this requirement on a case-by-case basis when an affected FICU submits a waiver application to the NCUA. The Act provides broader authority for the Board to issue an order to waive this requirement and does not require an application or individual orders.<sup>25</sup> In response to the COVID-19 pandemic and resulting economic conditions, the Board has determined that it is appropriate to temporarily amend § 702.201 to provide the Board express regulatory authority to issue a single order waiving the earnings-retention requirement for all FICUs classified as adequately capitalized while this temporary rule is in effect. The Board intends, as it did in its June 2020 order, to authorize the applicable Regional Director to require an application for an

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<sup>23</sup> Pub. L. 116–260 (Dec. 27, 2020).

<sup>24</sup> This relief is provided for FICUs that are required to make an earnings retention transfer under §702.201.

<sup>25</sup> See 1 U.S.C. 1 (providing that unless context indicates otherwise, words importing the singular also apply to several persons or parties).

earnings transfer waiver if a particular FICU poses undue risk to the NCUSIF or exhibits material safety and soundness concerns.

Amending the regulation in this manner will allow the Board to respond to circumstances that broadly affect many FICUs with a single issuance rather than numerous individual waiver approvals. This provision will be effective on the date the notice is published in the *Federal Register* and will expire on March 31, 2022.

This interim final rule will impact the processing of earnings transfer waiver submissions listed in the following table. It will not impact the earnings transfer waiver submissions that were due March 16, 2021, as a result of a credit union’s PCA classification of adequately capitalized (or lower), based on the Call Report for the quarter ending of December 31, 2020.

<b>Call Report Effective Date</b>	<b>PCA Classification Date</b>	<b>Earnings Transfer Waiver Submission Date</b>	<b>Quarterly Net Worth Transfer Date</b>	<b>Earnings Transfer Waiver Permissible</b>
March 31, 2021	April 30, 2021	June 15, 2021	June 30, 2021	Yes
June 30, 2021	July 30, 2021	Sept. 15, 2021	Sept. 30, 2021	Yes
Sept. 30, 2021	Oct. 31, 2021	Dec. 16, 2021	Dec. 31, 2021	Yes
Dec. 31, 2021	Jan. 30, 2022	March 16, 2022	March 31, 2022	Yes

Once this regulatory amendment is in effect, the Board intends to issue the order described above following the publication of this rule in the *Federal Register*. The order will be applicable to adequately capitalized FICUs and will grant relief from the earnings-retention requirement without requiring those FICUs to submit applications and receive individual waiver approvals, subject to the qualification previously noted in this section.

The Board is exercising this authority under 12 U.S.C. 1790d(e)(2) to enhance flexibility in the application of the earnings-retention requirement. This relief is necessary to avoid a

reduction of shares and thus retain system liquidity and capital adequacy, thereby furthering the purpose of PCA. As previously noted, the COVID-19 pandemic resulted in significant asset growth in the credit union industry. This growth may impact many credit unions' PCA classification, resulting in an increased number of credit unions being subject to the earnings retention requirement. Based on the December 31, 2020 Call Report data, 155 credit unions are classified as less than well capitalized and are subject to mandatory action under PCA. An estimated 107 credit unions were classified as adequately capitalized. These credit unions may experience relief from this rulemaking. The potential for the impact of additional issuance of COVID-19 pandemic relief in the form of stimulus payments could result in further reported asset growth and result in more credit unions qualifying for earnings retention relief. Specifically, 465 credit unions had net worth ratios between seven and eight percent at December 31, 2020. If these credit unions experienced substantial asset growth caused by increased share growth, there is a potential that some of these credit unions may also qualify for earnings retention relief during the next twelve months.

The Board further notes that FICU operations continue to be significantly disrupted as a result of social distancing practices, remote work, and related complications. This regulatory relief will lessen the administrative burden on both FICUs and the NCUA by avoiding the effort associated with preparing a waiver application and (for the NCUA) evaluating and responding to such applications. The Board notes qualifications in the planned order regarding FICUs that pose undue risk or material safety and soundness concerns will help ensure the purpose of PCA—namely, to resolve the problems of insured credit unions at the least possible long-term cost to the NCUSIF—is maintained while this temporary rule is in effect.

This approach affords the agency the flexibility to address potential difficulties FICUs face during this unprecedented period. The Board also notes that the current, specific requirements on earnings transfer waivers are based on a regulatory provision rather than a specific statutory directive.<sup>26</sup> Accordingly, the Board has flexibility to modify the regulatory provision to address the financial circumstances of individual FICUs as well as the broader credit union system. This is consistent with the overall statutory structure of PCA, which combines both mandatory and discretionary provisions.

Expansionary monetary and fiscal policies, combined with precautionary savings, are placing a strain on FICU net worth. The ongoing economic impact of the COVID-19 pandemic may result in an increase in the volatility of share balances, loan demand, and loan losses. The resulting stress on credit union balance sheets could potentially require an increased level of liquidity management throughout 2021. The NCUA continues to encourage credit unions to work with their members who are affected by the COVID-19 pandemic. Allowing for a broad order relieving adequately capitalized FICUs from this requirement is consistent with the statutory criteria for issuing such an order—namely, avoiding a significant redemption of shares and furthering the purpose of 12 U.S.C. 1790d to “resolve the problems of insured credit unions at the least possible long-term loss to the Fund.”<sup>27</sup>

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

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<sup>26</sup> 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.

<sup>27</sup> 12 U.S.C. 1790d(a)(1).

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

With respect to NWRPs, the Act provides a broad directive that a FICU that is less than adequately capitalized must submit an applicable NWRP to the NCUA. The NCUA, by regulation, has provided additional details to flesh out this statutory provision.

Section 702.206(a) of the NCUA’s regulations specifies the schedule for filing an NWRP, and § 702.206(c) of the NCUA’s regulations outlines the contents of an NWRP.<sup>28</sup>

The Board has determined that it is appropriate to waive the NWRP content requirements for FICUs that become classified as undercapitalized (those that have a net worth ratio of 4 percent to 5.99 percent) predominantly as a result of share growth. In these cases, a FICU may submit a significantly simpler NWRP to the applicable Regional Director noting that the FICU became undercapitalized as a result of share growth. Specifically, a FICU would be required to attest that its reduction in capital was caused by share growth and that such share growth is a temporary condition due to the COVID-19 pandemic and congressional actions to provide stimulus through direct payments to taxpayers. Federally insured, state-chartered credit unions

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<sup>28</sup> 12 CFR 702.206(c). Under the current regulation, an NWRP must -

(1) Specify -

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

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

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

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

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

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

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

must comply with applicable state requirements when submitting NWRPs for state supervisory authority approval.

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

The Board has determined it is appropriate to modify the regulation addressing NWRPs given the continued economic disruption caused by the COVID-19 pandemic. The ongoing disruption has led to unprecedented expansionary monetary and fiscal policies, combined with precautionary savings, placing a strain on FICU net worth. Accordingly, an increased number of credit unions are experiencing PCA reclassification to lower categories due to growth in savings. Given the current levels of volatility of share balances, loan demand, and loan losses in the credit union industry, the detail contained in traditional NWRPs may not be as meaningful. Accordingly, the streamlined NWRP described in this interim final rule will provide sufficient information to account for current economic conditions.

Based on December 31, 2020, Call Report data, 48 credit unions would require an NWRP to be in place or be submitted for approval based on their PCA classification. This is an increase

of 30 percent from the 37 credit unions required to have an NWRP in place or submitted for approval when compared to PCA classifications based on December 31, 2019 Call Report data, illustrating an upward trend.

The streamlined NWRP described in the proposed rule will provide sufficient information, based on current economic conditions, to allow a Regional Director to determine if a credit union is prepared to manage the volatility associated with the COVID-19 pandemic and the impact on a credit union's financial and operational position.

As it concluded in the May 2020 interim final rule, the Board continues to believe it will be able to fulfill its statutory duty to evaluate an NWRP even if the plan is more concise and streamlined than plans submitted prior to the COVID-19 pandemic. Such a streamlined approach is acceptable because the more extensive information required under the current requirements may not be practicable or useful under the current situation. Further, the current requirement addresses methods for the Board to evaluate an NWRP. The Board believes it can determine if an NWRP is acceptable even if it lacks some of the detailed submissions that the current regulation specifies. The Board further notes that if a FICU falls below being adequately capitalized because of temporary share growth, the risk is limited.

A credit union's eligibility to submit a streamlined NWRP to the NCUA will be determined based on the effective date of the credit union's PCA classification, as defined in part 702 of the NCUA's regulations.<sup>29</sup> The streamlined NWRP will apply, on a case-by-case basis, to credit unions that become classified as undercapitalized (those that have a net worth ratio of 4 percent to 5.99 percent) predominantly as a result of share growth. A credit union that has a PCA classification which has declined prior to the implementation of this rule will not be able to

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<sup>29</sup> 12 CFR Part 702.



submit a streamlined NWRP. To further clarify, a credit union that has a PCA classification which has declined, requiring a NWRP prior to the expiration of this interim final rule, will be permitted to submit a streamlined NWRP as reflected in the following table.

Call Report Effective Date	PCA Classification Date	Streamlined NWRP Permissible
December 31, 2020	January 30, 2021	No
March 31, 2021	April 30, 2021	Yes
June 30, 2021	July 30, 2021	Yes
September 30, 2021	October 31, 2021	Yes
December 31, 2021	January 30, 2022	Yes

#### **IV. Regulatory Procedures**

##### *A. Administrative Procedure Act*

The Board is issuing the interim final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).<sup>30</sup> Pursuant to the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”<sup>31</sup>

The Board believes the public interest is best served by implementing the interim final rule immediately upon publication in the Federal Register. The Board notes that the COVID-19 pandemic is unprecedented. It remains an evolving situation, making it difficult to anticipate

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<sup>30</sup> 5 U.S.C. 553

<sup>31</sup> 5 U.S.C. 553(b)(3).

how disruptions caused by the pandemic will manifest themselves in the financial system. In particular, an individual FICU may face an emergency situation, including a downgraded capital classification and the corresponding implications, unless it can invoke the regulatory relief afforded by this interim final rule. Because the unprecedented expansionary monetary and fiscal policies, combined with precautionary savings, are placing a strain on FICU net worth, the Board believes it has good cause to determine that ordinary notice and public procedure are impracticable and that moving expeditiously in the form of an interim final rule is in the best of interests of the public and the FICUs that serve that public. The temporary regulatory changes are necessary steps designed to alleviate potential liquidity and resource strains including stress on capital adequacy and are undertaken with expedience to ensure the maximum intended effects are in place at the earliest opportunity.

Further, as an independent basis for good cause with respect to forgoing comments before issuing the interim final rule, the Board received comments on the May 2020 interim final rule, which addressed identical issues as today's notice. All commenters supported the proposed changes to alleviate burden on credit unions and the agency, which largely addressed issues related to waiving certain PCA procedures rather than substantive concerns. Accordingly, further delay for additional comments is inconsistent with the public interest because it would unnecessarily delay the needed relief for credit unions.

Notwithstanding the issuance of an interim final rule without the opportunity for advance comments, the Board values public input in its rulemakings and believes that providing the opportunity for comment enhances its regulations. Accordingly, the Board is soliciting comments on this rulemaking even though this rule is being issued on an interim-final basis. The amendments made by the interim final rule will automatically expire on March 31, 2022 and are

limited in number and scope. For these reasons, the Board finds there is good cause consistent with the public interest to issue the rule without advance notice and comment.

The APA also typically requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.<sup>32</sup>

Because the rule relieves currently codified limitations and restrictions, the interim final rule is exempt from the APA's delayed effective date requirement. As an alternative basis to make the rule effective without the 30-day delayed effective date, the Board finds there is good cause to do so for the same reasons set forth above regarding advance notice and opportunity for comment.

*B. Congressional Review Act.*

For purposes of the Congressional Review Act,<sup>33</sup> the Office of Management and Budget (OMB) determines whether a final rule constitutes a “major” rule. If the OMB deems a rule to be a “major rule,” the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.

The Congressional Review Act defines a “major rule” as any rule the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in, or is likely to result in, (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.<sup>34</sup>

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<sup>32</sup> 5 U.S.C. 553(d).

<sup>33</sup> 5 U.S.C. 801-808.

<sup>34</sup> 5 U.S.C. 804(2).

For the same reasons set forth above, the Board is adopting the interim final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.<sup>35</sup> In light of current market uncertainty, the Board believes that delaying the effective date of the rule would be contrary to the public interest for the same reasons discussed above.

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

#### *C. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a valid OMB control number. The information collection requirements prescribed by the May 2020 interim final rule under PCA remains in effect and are cleared under OMB control number 3133-0154.

#### *D. Executive Order 13132*

Executive Order 13132<sup>36</sup> encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency (as defined in 44 U.S.C. 3502(5)), voluntarily complies with the Executive order to

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<sup>35</sup> 5 U.S.C. 808.

<sup>36</sup> 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).

adhere to fundamental federalism principles. The interim final rule will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. The Board has therefore determined that this rule does not constitute a policy that has federalism implications for purposes of the Executive order.

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

The NCUA has determined that this interim final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.<sup>37</sup>

*F. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule or a final rule pursuant to the APA<sup>38</sup> or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the *Federal Register*.<sup>39</sup> Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. For purposes of the RFA, the Board considers FICUs with assets less than \$100 million to be small entities.<sup>40</sup>

As discussed previously, consistent with the APA,<sup>41</sup> the Board has determined for good cause that general notice and opportunity for public comment is unnecessary, and therefore the Board is not issuing a notice of proposed rulemaking. Rules that are exempt from notice and comment procedures are also exempt from the RFA requirements, including conducting a

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<sup>37</sup> Public Law 105–277, 112 Stat. 2681 (1998).

<sup>38</sup> 5 U.S.C. 553(b).

<sup>39</sup> 5 U.S.C. 603, 604.

<sup>40</sup> NCUA IRPS 15–1. 80 FR 57512 (Sept. 24, 2015).

<sup>41</sup> 5 U.S.C. 553(b)(3)(B).

regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Accordingly, the Board has concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

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

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

Credit unions, Reporting and recordkeeping requirements.

By the NCUA Board, this \_\_\_ day of April 2021.

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Melane Conyers-Ausbrooks  
Secretary of the Board

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

#### **PART 702—CAPITAL ADEQUACY**

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

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

2. In § 702.201, revise and republish the introductory text of paragraph (b)(2) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(2) Notwithstanding paragraph (a) of this section, starting on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] and ending on March 31, 2022, for a credit union that is adequately capitalized:

\* \* \* \* \*

3. In § 702.206, revise and republish paragraph (c)(4) to read as follows:

**§ 702.206 Net worth restoration plans.**

\* \* \* \* \*

(c) \* \* \*

(4) Notwithstanding paragraphs (c)(1), (2), and (3) of this section, the Board may permit a credit union that is undercapitalized to submit to the Regional Director a streamlined NWRP plan attesting that its reduction in capital was caused by share growth and that such share growth is a temporary condition due to the COVID-19 pandemic. A streamlined NWRP plan is permitted between [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] and March 31, 2022.

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