

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700, 701, 702, and 741

RIN 3133-AD87

Net Worth and Equity Ratio

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed Rule.

SUMMARY: On January 4, 2011, President Obama signed Senate Bill 4036 into law, which, among other things, amends the statutory definitions of “net worth” and “equity ratio” in the Federal Credit Union Act. NCUA proposes to make conforming amendments to the definition of “net worth” as it appears in NCUA’s Prompt Corrective Action regulation and the definition of “equity ratio” as it appears in NCUA’s Requirements for Insurance regulation. NCUA also proposes to make technical changes in other regulations to ensure clarity and consistency in the use of the term “net worth,” as it is applied to federally-insured credit unions.

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

ADDRESSES: You may submit comments by any of the following methods
(Please send comments by one method only):

- NCUA Web Site:
http://www.ncua.gov/news/proposed_regs/proposed_regs.html.
Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include “[Your name] Comments on Notice of Proposed Rulemaking (Net Worth and Equity Ratio)” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

FOR FURTHER INFORMATION CONTACT: Justin M. Anderson, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION.

A. Background.

On January 4, 2011, President Obama signed Senate Bill 4036 (the Bill) into law. S. 4036, 111th Cong., Pub. L. No. 111-382 (2011). The Bill amends the Federal Credit Union Act (the Act) to clarify NCUA's authority to make stabilization fund expenditures without borrowing from the Treasury, amends the definitions of "equity ratio" and "net worth," and requires the Comptroller General of the United States to conduct a study on NCUA's handling of the recent corporate credit union crisis. The Bill is divided into four sections, each of which is discussed briefly below. The amendments in this proposed rule implement the changes made to the Act by sections two and three of the Bill.

1. Section one – Stabilization Fund

This section amends the Temporary Corporate Credit Union Stabilization Fund (TCCUSF) provisions of the Act in 12 U.S.C. §1795e. Specifically, the amendments add a new provision authorizing NCUA to make premium assessments of federally-insured credit unions to pay pending or future TCCUSF expenses directly, in addition to the existing authority to make assessments to repay Treasury advances. Pub. L. No. 111-382. Exercise of this direct assessment authority requires the NCUA Board "take into consideration any potential impact on credit union earnings such an assessment may have" and

requires the premium be paid not later than 60 days following the assessment. The amendments also make clear that, during the period of time in which the Treasury agrees to extend the life of the TCCUSF, the NCUA can obtain additional advances from the Treasury. *Id.* NCUA does not have regulations on the TCCUSF, so no changes to NCUA regulations are necessary.

2. Section two – Equity Ratio

Section two of the Bill amends §202(h)(2) of the Act (12 U.S.C. 1782(h)(2)) by redefining the equity ratio for the National Credit Union Share Insurance Fund (NCUSIF or Fund). Under the amended definition, the equity ratio will be calculated “using the financial statements of the Fund alone, without any consolidation or combination with the financial statements of any other fund or entity.” Pub. L. No. 111-382. The term “equity ratio” is defined in §741.4(b) of NCUA’s regulations and is used in several places throughout that section. As discussed more fully below, the Board, is proposing to amend the definition of “equity ratio” in NCUA’s regulations to mirror the recent statutory change.

Section three – Net Worth Definition

Section three of the Bill amends §216(o)(2) of the Act (12 U.S.C. 1790(o)(2)) by redefining the term “net worth” as it applies to federally insured credit unions for purposes of prompt corrective action (PCA). The amended definition retains all of the existing elements of net worth and includes the following new component: “[A]t the Board’s discretion and subject to rules and regulations established by

the Board, assistance provided under §208 to facilitate a least-cost resolution consistent with the best interests of the credit union system.” Pub. L. No. 111-382. As discussed more fully below, the Board proposes to amend the definition of “net worth” in NCUA’s regulations for PCA purposes (§702.2(f)) to reflect and implement this statutory change.

Section four – Study of the National Credit Union Administration

Section four of the Bill requires the Comptroller General of the United States to conduct a study of NCUA’s supervision of corporate credit unions and implementation of PCA. The purpose of the study is to determine the reasons for the failure of any corporate credit union since 2008, evaluate the adequacy of NCUA’s response to the failures of corporate credit unions, evaluate the effectiveness of the implementation of PCA by NCUA, and examine whether NCUA has effectively implemented each of the recommendations of its Inspector General in its Material Loss Review Report. The Bill requires the Comptroller to submit the report, within one year from the date of enactment of the Bill, to the Financial Stability Oversight Council (the Council). Within six months after the date of receipt of the report from the Comptroller General, the Council must submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on actions taken in response to the report, including any recommendations issued to the National Credit Union Administration under

section 120 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5330).

B. Proposed Changes.

As noted above, the Bill amends the definition of “equity ratio” and the PCA definition of “net worth.” The Board is proposing to make amendments to NCUA’s regulations to implement the recent statutory changes.

1. Equity Ratio

The Board is proposing to amend the definition of “equity ratio” set forth in §741.4(b) to clarify that the equity ratio will be calculated using the financial statements of the NCUSIF alone, without any consolidation or combination with the financial statements of any other fund or entity. The Board notes that this amendment reflects a statutory change to §202 of the Act, 12 U.S.C. §1782, and, as such, the Board must make this change to §741.4, which implements §202 of the Act.

2. Net Worth

The Board is also proposing to amend NCUA’s regulations to reflect the recent statutory change to the definition of “net worth” for purposes of PCA. As already noted, the definition of “net worth” for purposes of PCA is found in §702.2(f) of NCUA’s regulations, 12 CFR §702.2(f). The Bill provides that the Board, in its discretion, may include any assistance provided under §208 of the Act (12 U.S.C.

1788) in the computation of a federally insured credit union's net worth for PCA purposes. Pub. L. No. 111-382, §3. The Bill also provides that the inclusion of §208 assistance in the computation of net worth is subject to any rules or regulations established by the Board. *Id.*

Section 208 of the Act allows the Board, in its discretion, to make loans to, or purchase the assets of, or establish accounts in insured credit unions the Board has determined are in danger of closing or in order to assist in the voluntary liquidation of a solvent credit union. 12 U.S.C. 1788(a)(1). Except in the case of a voluntary liquidation, the Board is permitted to provide assistance under §208 only when it is necessary to protect the Fund or the interests of the members of the credit union. *Id.* In addition to §208 assistance provided for liquidity purposes, the NCUA may place funds containing the elements of capital in a credit union. 12 U.S.C. §1788(a)(2). Capital accounts would include subordinated notes and capital instruments. These accounts, including interest accrued and paid, would be available to cover losses realized by the credit union exceeding available retained earnings and should be included in the calculation of regulatory capital to the extent the accounts meet the qualifications discussed below.

In this rule the Board proposes to limit the inclusion of §208 assistance in the computation of a credit union's net worth to those types of assistance containing minimum elements of equity. The Board proposes to further limit the accounts

that will qualify as regulatory capital to accounts that: have a remaining maturity of five years or more; are not insured by the NCUSIF; may not be pledged as security on a loan to, or other obligation of, any party; have non-cumulative dividends; and are subordinate to the NCUSIF, shareholders, and creditors.

Although the Board is currently proposing rules with respect to §208 assistance as permitted under the Bill, the Board may propose additional rules in the future, as it is necessary to protect the Fund or ensure the efficient application of PCA.

a. Technical Changes

This proposed rule also includes a technical correction to the definition of net worth in §702.2(f)(3) to address situations where an acquiring credit union benefits twice from a combination. NCUA's current rules require the addition of the retained earnings of the acquired credit union to the net worth of the acquiring credit union. In the circumstance of a combination that results in a bargain purchase gain,¹ the current rule's requirements can result in a double counting of net worth for the purposes of PCA. This proposed correction seeks to prevent this situation by requiring the subtraction of any bargain purchase gain from the target's retained earnings before the latter amount is included as net worth. This proposed correction limits the difference between the added retained

¹ For combinations of mutual institutions in which no consideration is transferred, a bargain purchase occurs when the fair value of the net assets acquired exceeds the fair value of the equity or member interest in the acquirer. Generally accepted accounting principles require this excess to be recognized immediately as a gain in earnings, which increases retained earnings and qualifies as regulatory capital. See Accounting Standards Codification (ASC) Paragraphs 805-30-55-3 through 55-5, *Special Considerations in Applying the Acquisition Method to Combinations of Mutual Entities*.

earnings and bargain purchase gain to an amount that is zero or more, which will prevent a retained earnings deficit from flowing forward to the acquiring institution. The proposed revision to this section also adds the requirement that the retained earnings of the acquired credit union at the point of acquisition must be measured under generally accepted accounting principles as referenced in the Act. 12 U.S.C. §1790d(o)(2)(A).

The Board is also making technical changes to other sections of NCUA's regulations that reference or use the term "net worth" in the PCA context. These changes will ensure clarity and continuity in NCUA's definition of "net worth."

Section 701.21(h) of the regulations addresses third party servicing of indirect vehicle loans and, in part, limits the aggregate amount of vehicle loans serviced by a third-party servicer that a federally-insured credit union can acquire, as a percentage of the credit union's net worth. The §701.21(h)(4)(iv) definition of "net worth" is different than that used in Part 702 but is based on the same statutory provision of the Act. Currently §701.21(h)(4)(iv) defines "net worth" as:

the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles. For low income-designated credit unions, net worth also includes secondary capital accounts that are uninsured and subordinate to

all other claims, including claims of creditors, shareholders, and the National Credit Union Share Insurance Fund.

12 CFR §701.21(h)(4)(iv). While this definition is similar to that used in §702.2(f), it does not contain all of the elements used in that definition and would not reflect the change made by this proposed rule. For consistency and clarity, the Board proposes to amend §701.21(h)(4)(iv) to indicate that the term “net worth” has the same meaning as it is defined in §702.2. The proposed change would replace the current definition in §701.21(h)(4)(iv) with a statement that the term “net worth” means the retained earnings balance of a credit union at quarter end as determined under generally accepted accounting principles and as further defined in §702.2(f). This cross reference is similar to others used in NCUA’s regulations. Although the Board is deleting language regarding the computation of net worth for low-income credit unions, this provision, which is already found in §702.2(f), will be incorporated by reference under this proposed change.

With respect to sections of the regulations outside of Part 702 that use the term “net worth” in the PCA context, the Board will continue to use cross references to the §702.2(f) definition of “net worth.” Such cross references are found in §§ 703.2, 742.2, and 747.2003 of NCUA’s regulations. Finally, the Board notes that §701.34(c) and (d) and its accompanying appendix and §701.21(c)(7)(iii) of NCUA’s regulations use the term “net worth” but do not currently contain a cross reference or an alternative definition of “net worth.” To conform these and any

future uses of the term “net worth,” the Board is proposing to include a statement in the general definitions of the regulations (Part 700) to clarify that, unless otherwise noted, the term “net worth” as applied to an insured credit union has the same definition as that set forth in §702.2(f). The Board believes this “catch all” statement will eliminate confusion and ensure the correct definition is applied in varying circumstances.

b. Net Worth in the Member Business Loan Context

Consistent with the statutory amendment, this proposed rule amends the definition of “net worth” only when that term is used in the PCA context. NCUA’s member business loan regulation contains a definition of “net worth” that differs from the definition used in Part 702. See. 12 CFR §723.21 This definition is based on the statutory definition included in limitations of member business loans set forth in §107A of the Act, 12 U.S.C. 1757a(c)(2). The Bill, which provided the authority for the changes proposed in this rule, did not address the definition of “net worth” as it applies in the context of member business loans. As such, the Board is not amending the definition of “net worth” in the member business loan rule.

REGULATORY PROCEDURES

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under \$10 million in assets). This proposed rule modifies the definition of “net worth” and “equity ratio,” it will not have a significant economic impact on a substantial number of small credit unions and a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed amendments will not increase paperwork requirements and a paperwork reduction analysis is not required.

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, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects 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. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999 - Assessment of Federal Regulations and Policies on Families

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

List of Subjects

12 CFR parts 700, 701, 702, and 741

Bank deposit insurance, credit, credit unions, reporting and recordkeeping requirements.

By the National Credit Union Administration Board on March 17, 2011.

Mary Rupp

Secretary of the Board

For the reasons stated in the preamble, the National Credit Union Administration proposes to amend 12 CFR parts 700, 701, 702 and 742 as set forth below:

PART 700 – Definitions

1. The authority citation for part 700 continues to read as follows:

Authority: 12 U.S.C. 1752, 1757(6) and 1766.

2. In §700.2, redesignate paragraphs (f) through (j) as paragraphs (g) through (k) and add new paragraph (f) to read as follows:

§700.2 Definitions.

* * * * *

(f) *Net worth.* Unless otherwise noted, the term “net worth,” as applied to credit unions, has the same meaning as set forth in §702.2(f) of this chapter.

PART 701 – Organization and Operation of Federal Credit Unions

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 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. Revise §701.21(h)(4)(iv) to read as follows:

§701.21 Loans to Members and Lines of Credit to Members

* * * * *

(h) * * *

(4) * * *

(iv) The term “net worth” means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles and as further defined in §702.2(f) of this chapter.

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PART 702 – Prompt Corrective Action

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

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

2. Revise paragraph (3) and add new paragraph (4) to §702.2(f) to read as follows:

§702.2 Definitions.

* * * * *

(f) * * *

(3) For a credit union that acquires another credit union in a mutual combination, net worth includes the retained earnings of the acquired credit union, or of an integrated set of activities and assets, less any bargain purchase gain recognized in either case to the extent the difference between the two is greater than zero. The acquired retained earnings must be determined at the point of acquisition under generally accepted accounting principles. A mutual combination is a transaction in which a credit union acquires another credit union or acquires an integrated set of activities and assets that is capable of being conducted and managed as a credit union.

(4) The term “net worth” also includes loans to and accounts in an insured credit union established pursuant to section 208 of the Act [12 U.S.C. 1788], provided such loans and accounts:

- (i) have a remaining maturity of more than 5 years;
- (ii) are subordinate to all other claims including those of shareholders, creditors and the National Credit Union Share Insurance Fund;
- (iii) are not pledged as security on a loan to, or other obligation of, any party;
- (iv) are not insured by the National Credit Union Share Insurance Fund;
- (v) have non-cumulative dividends;
- (vi) are transferable; and
- (vii) are available to cover operating losses realized by the insured credit union that exceed its available retained earnings.

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PART 741 – Requirements for Insurance

1. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781-1790, and 1790d; 31 U.S.C. 3717.

2. Revise §741.4(b)(2) to read as follows:

§741.4 Insurance Premium and One Percent Deposit.

* * * * *

(b) * * *

(2) *Equity ratio*, which shall be calculated using the financial statements of the NCUSIF alone, without any consolidation or combination with the financial statements of any other fund or entity, means the ratio of:

* * * * *