

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 702

RIN 3133-AF01

Delay of Effective Date of the Risk-Based Capital Rules

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule, delay effective date of risk-based capital, Part 702.

SUMMARY: The NCUA Board (Board) is seeking comment on a proposed rule that would delay the effective date of the NCUA's October 29, 2015 final rule regarding risk-based capital (2015 Final Rule), and the NCUA's November 6, 2018 supplemental final rule regarding risk-based capital (2018 Supplemental Rule), moving the effective date of both rules to January 1, 2022. This proposed delay would allow the NCUA Board additional time to holistically and comprehensively evaluate capital standards for federally insured credit unions. The proposed delay would also provide covered credit unions and the NCUA with additional time to prepare for the rule's implementation. During the extended delay period, the NCUA's current Prompt Corrective Action (PCA) requirements would remain in effect.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit written comments, identified by RIN 3133-AF01, 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.
- NCUA Web Site: <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx>. Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include “[Your name] – Comments on Proposed Rule: Risk-Based Capital—Delay of Effective Date” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

You can view all public comments on the NCUA’s website at <https://www.ncua.gov/regulation-supervision/rules-regulations/proposed-pending-and-recently-final-regulations> 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. You may inspect paper copies of comments in the NCUA’s law library at 1775 Duke Street, Alexandria, Virginia 22314,

by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518-6546, or send an e-mail to OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: *Policy and Analysis:* Julie Cayse, Director, Division of Risk Management, Office of Examination and Insurance, at (703) 548-2142; Kathryn Metzker, Risk Officer, Division of Risk Management, Office of Examination and Insurance, at (571) 438-0073; Julie Decker, Risk Officer, Division of Risk Management, Office of Examination and Insurance, at (703) 518-3684; *Legal:* John Brolin, Senior Staff Attorney, Office of General Counsel, at (703) 518-6540; or by mail at National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

At its October 2015 meeting, the Board issued the 2015 Final Rule to amend Part 702 of the NCUA's PCA regulations to require that credit unions taking certain risks hold capital commensurate with those risks.¹ The 2015 Final Rule restructures the NCUA's PCA regulations and makes various revisions, including amending the agency's current risk-based net worth requirement by replacing the risk-based net worth ratio with a new risk-based capital ratio for federally insured, natural-person credit unions (credit unions). The 2015 Final Rule also eliminates several provisions in the NCUA's current PCA regulations, including provisions related to the regular reserve account, risk-mitigation credits, and alternative risk weights. To

¹ 80 FR 66625 (Oct. 29, 2015).

provide credit unions and the NCUA sufficient time to make necessary adjustments, and to reduce the burden on affected credit unions, the NCUA initially delayed the effective date of the 2015 Final Rule until January 1, 2019.

At its October 2018 meeting, the Board issued the 2018 Supplemental Rule to further delay the effective date of the 2015 Final Rule for an additional year, moving the effective date from January 1, 2019 to January 1, 2020. The 2018 Supplemental Rule also amended the definition of “complex” credit union adopted in the 2015 Final Rule for risk-based capital purposes by increasing the threshold level for coverage from \$100 million to \$500 million. These changes provided covered credit unions and the NCUA with additional time to prepare for the rule’s implementation, and exempted an additional 1,026 credit unions from the risk-based capital requirements of the 2015 Final Rule without subjecting the National Credit Union Share Insurance Fund (NCUSIF) to undue risk.²

The Board is now proposing to further delay the effective dates of both the 2015 Final Rule and the 2018 Supplemental Final Rule, moving the effective dates of both rules to January 1, 2022. This proposed delay would allow the Board additional time to holistically and comprehensively evaluate the NCUA’s capital standards for federally insured credit unions. For example, in this additional time, the Board would examine whether asset securitization, and subordinated debt should be addressed, and whether a community bank leverage ratio analog should be integrated

² 83 FR 55467 (Nov. 6, 2018).

into the NCUA's capital standards. These issues, and additional matters that prompt the need for a further delay, are discussed further below.

Asset Securitization

Federal credit unions have the authority to issue and sell securities as a power incidental to their operation,³ and, in the case of Government National Mortgage Association (Ginnie Mae) securities, as a power expressly authorized under the Federal Credit Union Act (FCUA).⁴ The extent to which federally insured, state-chartered credit unions may issue and sell securities depends on state law and regulation. Accordingly, the NCUA's capital standards should properly account for any asset securitization conducted by federally insured credit unions.

Subordinated Debt

As indicated in the 2015 Final Rule, the NCUA planned to examine additional forms of qualifying capital in a separate proposed rule. In February 2017, the NCUA issued an advanced notice of proposed rulemaking for alternative capital,⁵ and the NCUA's Regulatory Review Task Force agenda, published in August 2017, addresses the NCUA's intent with regard to the 2015 Final Rule.⁶ This proposed delay would provide the Board additional time to examine proposing and finalizing a rule to allow certain forms of subordinated debt to qualify as capital for risk-

³ See § 1757(17) (An FCU "shall have the power . . . to exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated."); 12 C.F.R. §§ 721.2 & 721.4; and NCUA Legal Opinion Letter 17-0670 (June 21, 2017).

⁴ § 1757(7)(E) (Providing in relevant part: "a federal credit union may issue and sell securities which are guaranteed pursuant to section 1721(g) of [title 12 of the United States Code].").

⁵ 82 FR 9691 (Feb. 8, 2017).

⁶ 82 FR 161 (Aug. 22, 2017).

based capital purposes. The delay would also permit credit unions subject to the risk-based capital requirement time to consider the use of any authorized forms of subordinated debt before the risk-based capital rules go into effect.

Community Bank Leverage Ratio Analog

The Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018⁷ required the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the other banking agencies), to propose a simplified, alternative measure of capital adequacy for federally insured banks.⁸ In February 2019, the other banking agencies issued a proposed rule that would provide qualifying community banks the option to comply with a simplified measure of capital adequacy.⁹ Under the proposal, qualifying community banking organizations that comply with and elect to use the community bank leverage ratio (CBLR) framework and that maintain a CBLR greater than 9 percent would be considered to have met the capital requirements for the “well-capitalized” capital category under the other banking agencies’ PCA frameworks and would no longer be subject to the generally applicable capital rule. The NCUA Board believes the delay in the effective date of risk-based capital is appropriate to examine the other banking agencies’ recent CBLR proposal and consider whether adopting an equivalent provision for credit unions is appropriate and consistent with the FCUA.

⁷ Public Law 115-174 (May 24, 2018).

⁸ *Id.* at § 201.

⁹ 84 FR 3062 (Feb. 8, 2019).

Additional Time to Prepare for Implementation

The proposed delay would also provide covered credit unions and the NCUA with additional time to prepare for the rule's implementation. The NCUA has several initiatives in process to improve and modernize how the agency conducts examinations and supervision. The goals of these initiatives are to replace outdated, end-of-life examination systems, streamline processes, adopt enhanced examination techniques, and leverage new technology and data to maintain high quality supervision of federally-insured credit unions with less onsite presence. These initiatives include the Enterprise Solution Modernization, Call Report Modernization, and Virtual Examination programs. The proposed delay would enable the NCUA to direct additional time and resources toward modernizing examination systems, versus dedicating resources to end-of-life systems being retired.

This additional time would further benefit credit unions as they work to implement the Financial Accounting Standards Board's final current expected credit loss (CECL) standard. The current Board believes the proposed delay would allow credit unions additional time to allocate resources to the implementation of CECL.

Under this proposal, the NCUA's current PCA regulation would remain in effect until the 2015 Final Rule and the 2018 Supplemental Rule's effective date. The NCUA would continue to enforce the capital standards currently in place and address any supervisory concerns through existing regulatory and supervisory mechanisms. The Board believes, given the facts above, that extending the implementation period of the 2015 Final Rule and 2018 Supplemental Rule until January 1, 2022, would be reasonable and would not pose undue risk to the NCUSIF.

VII. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include credit unions with assets less than \$100 million)¹⁰ and publishes its certification and a short, explanatory statement in the *Federal Register* together with the rule.

The proposed delay of the 2015 Final Rule and 2018 Supplemental Rule would affect only complex credit unions, which are those with greater than \$500 million in assets under the 2018 Supplemental Rule. As a result, credit unions with \$100 million or less in total assets would not be affected by this proposal. Accordingly, the NCUA certifies that this proposal will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

¹⁰ See 80 FR 57512 (Sept. 24, 2015).

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates new or amends existing information collection requirements.¹¹ For purposes of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement.

The information collection requirements prescribed by §702.101(b) were set-out in the August 8, 2018 (83 FR 38997), proposed rule and assigned OMB control number 3133-0191. This proposed rule does not contain any new information collection requirements that require approval by OMB under the PRA. The proposed rule would only extend the effective date.

The Board invites comment on (a) whether the collections of information are necessary for the proper performance of the agency's function, including practical utility; (b) the accuracy of estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information being collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

All comments are a matter of public record. Comments regarding the information collection requirements of this rule should be sent to (1) Dawn Wolfgang, NCUA PRA Clearance Officer,

¹¹ 44 U.S.C. 3507(d).

National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314, or Fax No. 703-519-8572, or Email at *PRAcomments@ncua.gov* and the (2) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov*.

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

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the NCUA, including whether the information will have a practical use;
- Evaluating the accuracy of the NCUA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

Executive Order 13132

Executive Order 13132 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 principles of the executive order to adhere to fundamental federalism principles. This proposed rule reduces the number of federally insured natural-person credit unions, including federally insured, state-chartered natural-person credit unions that would be subject to the 2015 Final Rule. It may have, to some degree, a direct effect 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. It does not, however, rise to the level of material impact for purposed of Executive Order 13132.

Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule will 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).

By the National Credit Union Administration Board on June 20, 2019.

Gerard Poliquin,
Secretary of the Board.