6. For 11 drawings, UA1 through UC2–2, cable riser shield is removed and separated into new UP unit.

7. For 5 drawings, UG6 through UG17–3, combinations of elbows, arresters, and connector blocks are added.

8. Due to obsolete practices, the following drawings are removed: UM3–44, UM3–45, UM3–46, UM5–6, UM5–6A, UM6–35, UM6–36, UM7–1, UM8–5, UM8–6, UM8–7, UM9–2, UM12, UM48–3, UM48–4, UX7.

9. Three new drawings for Single Phase Riser Pole Assembly Units, UA4, UA.G, and UA1.USG, are added.

10. Two new drawings for Two Phase Riser Pole Assembly Units, UB5 and UB6, are added.

11. Eight new drawings for Three Phase Riser Pole Assembly Units, UC3, UC4, UC5, UC7.1, UC7.3, UC7.4, UC8.1, and UC8.2, are added.

12. Six new drawings for Foundation and Assembly Units, UF.PBC, UF.PBN, UF3.BC, UF3.BN, UF3.PN, and UF3.VC, are added.

13. Five new drawings for Transformer Assembly Units, UG1.01, UG1.02, UG1.2, UG3.01, and UG3.02, are added.

14. Four new drawings for Grounding Assembly Units, UH2.0, UH2.2, UH2.7, and UH4.1G, are added.

15. Two new drawings for Secondary Assembly Units, UJ3.3 and UJ4.3, are added.

16. Three new drawings for Service Assembly Units, UK2.1, UK2.2, and UK4, are added.

17. Five new drawings for Miscellaneous Assembly Units, UM1.XX, UM3, UM6.JN6226, UM6.PKG, and UM6.RK, are added.

18. Two new drawings for Outdoor Lighting Assembly Units, UO1 and UO2, are added.

19. Eight new drawings for System Protection Assembly Units, UP7.04, UP7.B1, UP7.B2, UP7.B3, UP7.C, UP7.FC, UP7.UG, and UP8, are added.

20. A new drawing for Metering Assembly Units, UQG, is added.

21. A new drawing for Recloser Assembly Units, UR3, is added.

22. A new drawing for Sectionalizing Assembly Units, US1.DC, is added.

23. Four new drawings for Trench Assembly Units, UT2, UT3, UT4, and UT5, are added.

24. Four new drawings for Voltage Control Assembly Units, UY1.1XX, UY1.1.XXSW, UY3.2L, and UY3.3L, are added.

List of Subjects in 7 CFR Part 1728

Electric power, Incorporation by reference, Loan programs-energy, Rural areas.

Accordingly, for reasons set forth in the preamble, chapter XVII, title 7, the Code of Federal Regulations is amended as follows:

PART 1728—ELECTRIC STANDARDS AND SPECIFICATIONS FOR MATERIALS AND CONSTRUCTION

■ 1. The authority citation for part 1728 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

■ 2. Revise § 1728.97(a)(24) to read as follows:

§ 1728.97 Incorporation by reference of electric standards and specifications.

* * * * *

(a) * * *

(24) Bulletin 1728F–806 (D–806) Specifications and Drawings for Underground Electric Distribution, October 11, 2018, incorporation approved for § 1728.98.

* * * * *

■ 3. Revise § 1728.98(a)(24) to read as follows:

§ 1728.98 Incorporation by reference of electric standards and specifications.

(a) * * *

(24) Bulletin 1728F–806 (D–806) Specifications and Drawings for Underground Electric Distribution), October 11, 2018.

* * * * *

Dated: October 31, 2018.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2018–24248 Filed 11–5–18; 8:45 am]

BILLING CODE ;P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700, 701, 702, 703, 713, 723, and 747

RIN 3133–AE90

Risk-Based Capital

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule; supplemental.

SUMMARY: The NCUA Board (Board) is amending the NCUA's previously revised regulations regarding prompt corrective action (PCA). The final rule delays the effective date of the NCUA's October 29, 2015 final rule regarding risk-based capital (2015 Final Rule) for one year, moving the effective date from January 1, 2019 to January 1, 2020. During the extended delay period, the NCUA's current PCA requirements will remain in effect. The final rule also amends the definition of a ''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 provide covered credit unions and the NCUA with additional time to prepare for the rule's implementation, and exempt 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.

DATES: The effective date of the final rule published on October 29, 2015 (80 FR 66625) is delayed until January 1, 2020. In addition, the amendments to § 702.103 in this final rule are effective on January 1, 2020.

FOR FURTHER INFORMATION CONTACT: *Policy and Analysis:* Julie Cayse, Director, Division of Risk Management, Office of Examination and Insurance, at (703) 518–6360; Kathryn Metzker, Risk Officer, Division of Risk Management, Office of Examination and Insurance, at (703) 548–2456; Julie Decker, Risk Officer, Division of Risk Management, Office of Examination and Insurance, at (703) 518–3684; Aaron Langley, Risk Management Officer, Data Analysis Division, Office of Examination and Insurance, at (703) 518–6387; *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:

I. Introduction

The NCUA's primary mission is to ensure the safety and soundness of federally insured credit unions. The agency performs this function by examining and supervising all Federal credit unions, participating in the examination and supervision of federally insured, state-chartered credit unions in coordination with state regulators, and insuring members' accounts at federally insured credit unions.[1] In its role as administrator of the NCUSIF, the NCUA insures and regulates 5,573 federally insured credit unions, holding total assets exceeding $1.4 trillion and serving approximately 111 million members.[2]

At its October 2015 meeting, the Board issued the 2015 Final Rule to

[1] As of December 31, 2017, within the nine states that allow privately insured credit unions, approximately 116 state-chartered credit unions are privately insured and are not subject to the NCUA's regulation and oversight.

[2] Based on December 31, 2017 Call Report Data.

amend Part 702 of the NCUA's current PCA regulations to require that credit unions taking certain risks hold capital commensurate with those risks.[3] The risk-based capital provisions of the 2015 Final Rule apply only to federally insured, natural-person credit unions with quarter-end total assets exceeding $100 million. The overarching intent of the 2015 Final Rule is to reduce the likelihood that a relatively small number of high-risk outlier credit unions would exhaust their capital and cause large losses to the NCUSIF. Under the Federal Credit Union Act (FCUA), federally insured credit unions are collectively responsible for replenishing losses to the NCUSIF.[4]

The 2015 Final Rule restructures the NCUA's current PCA regulations and makes various revisions, including amending the agency's 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 risk-based capital requirements set forth in the 2015 Final Rule are more consistent with the NCUA's risk-based capital ratio measure for corporate credit unions and, as the law requires, are more comparable to the regulatory risk-based capital measures used by the Federal Deposit Insurance Corporation (FDIC), Board of Governors of the Federal Reserve System, and Office of the Comptroller of Currency (Other Banking Agencies). 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.

The Board originally set the effective date of the 2015 Final Rule for January 1, 2019 to provide credit unions and the NCUA with sufficient time to make the necessary adjustments—such as systems, processes, and procedures—and to reduce the burden on affected credit unions.

On August 8, 2018, the Board published a proposed rule[5] (the Proposal) to amend the NCUA's 2015 Final Rule by (1) delaying the effective date of the rule until January 1, 2020; and (2) increasing the threshold level for coverage for NCUA's risk-based capital requirements from $100 million to $500 million by amending the definition of a ''complex'' credit union. This final rule adopts all the provisions in the Proposal with only one minor change, which is discussed in detail below.

II. The Final Rule and Public Comments on the Proposed Rule

The NCUA received 38 comment letters in response to its August 8, 2018 Proposal. These comment letters were received from credit union trade associations, Federal credit unions, state credit unions, state and regional credit union leagues, and other individuals.

A. Delayed Effective Date of the 2015 Final Rule

The Board initially established the effective date of the 2015 Final Rule as January 1, 2019 to provide credit unions and the NCUA with an extended period to make necessary adjustments to systems, processes, and procedures, and to reduce the burden on affected credit unions in meeting the new requirements. Based on feedback from the credit union community and agency staff, and the fact that the agency proposed changing the definition of a complex credit union, the Board proposed delaying the effective date of the 2015 Final Rule by one year, from January 1, 2019 to January 1, 2020. The Board believed extending the effective date was necessary and beneficial, and would provide covered credit unions with additional time to adjust systems, processes, and procedures affected by the requirements of the 2015 Final Rule.

Under the Proposal, the NCUA's current PCA regulation would have remained in effect until the 2015 Final Rule's proposed new effective date, January 1, 2020. The NCUA would have continued to enforce the capital standards currently in place and addressed any supervisory concerns through existing regulatory and supervisory mechanisms during the extended implementation period. The Board believed that, given the facts above, extending the implementation period of the 2015 Final Rule for an additional year would be reasonable and would not pose undue risk to the NCUSIF.

Public Comments on the Proposed Delay

Fourteen commenters explicitly supported delaying the implementation of the 2015 Final Rule until January 1, 2020 to allow the NCUA additional time to provide early guidance on new reporting requirements, and to help mitigate any potential impact the 2015 Final Rule may have on the credit union industry. Twenty two of the commenters stated that they appreciated the delay, but believed the delay should be longer. Of those commenters, all suggested that the delay should be for at least two years, with a few suggesting that more than two years might be appropriate. A number of commenters remarked that a two-year delay would be consistent with the timeframe set forth in legislation currently before Congress, such as section 701 of H.R. 5841, and suggested that the two-year delay was necessary to provide credit unions and the agency sufficient time to implement necessary systems, processes, and procedures. Three commenters suggested the 2015 Final Rule should be delayed for two years or more to give credit unions adequate time to make the necessary adjustments to meet the 10 percent risk-based capital target. Two commenters suggested that, in light of the health of the credit union system, the NCUA can afford to provide even more time, on a reasonable basis, to facilitate the development of its own examiners, as well as provide additional time for covered credit unions to make any strategic and operational changes they need to prepare for risk-based capital implementation. Two commenters suggested the 2015 Final Rule should be delayed two years or more to give credit unions time to understand and coordinate compliance with the Financial Accounting Standards Board's final current expected credit loss (CECL) standard, and its relation to the requirements of the 2015 Final Rule.

Two commenters recommend the proposed one year delay be expanded to include the grandfathering of the ''excluded goodwill'' and ''excluded other intangible assets'' provisions of the 2015 Final Rule, which are currently set to expire on January 1, 2029. In particular, the commenters suggested that the proposed delay of the 2015 Final Rule should also apply to the ten-year deferral period associated with supervisory mergers (example: The January 1, 2029 effective date should be adjusted to January 1, 2030). The commenters suggested this additional time would benefit credit unions that hold a significant amount of excluded goodwill or other intangible assets, as those terms are defined in the 2015 Final Rule.

Eight commenters recommended delaying implementation of the risk-based capital rule until revisions to the NCUA's regulations regarding

[3] 80 FR 66625 (Oct. 29, 2015).

[4] *See* 12 U.S.C. 1782(c)(2)(A) (The FCUA requires that each federally insured credit unions to pay a Federal share insurance premium equal to a percentage of the credit union's insured shares to ensure that the NCUSIF has sufficient reserves to pay potential share insurance claims by credit union members, and to provide assistance in connection with the liquidation or threatened liquidation of federally insured credit unions in troubled condition.).

[5] 83 FR 38997 (Aug. 8, 2018).

alternative capital [6] are finalized. Commenters stated a delay would give the NCUA time to finalize an alternative capital rule permitting credit unions additional ways to increase capital to meet the risk-based capital requirements.

Discussion of Delay in Implementation

Several commenters recommended delaying implementation of the 2015 Final Rule to be consistent with legislation before Congress. The Board is aware there are bills before Congress that would extend the effective date of the 2015 Final Rule for two years; [7] however, the Board continues to believe a one-year delay is sufficient. Since the 2015 Final Rule was issued in final form, covered credit unions and the NCUA have had more than three years to prepare for its implementation. Providing credit unions an additional year before implementing the 2015 Final Rule, making the total implementation period four years, should be more than sufficient to allow credit unions to incorporate the changes in the definition of complexity made under this final rule. Further, the change made by this final rule to the definition of complex credit union substantially reduces the number of credit unions subject to the 2015 Final Rule's risk-based capital requirements. Since the 2015 Final Rule was approved in October 2015, the cumulative net worth of credit unions with more than $500 million in assets has grown by more than 34 percent.[8] Credit unions that meet the definition of complex already hold, on average, more than 17 percent capital, or 70 percent more than the 10 percent required to be well-capitalized under the rule.[9] Accordingly, the Board believes the proposed delay of one-year will provide the NCUA and covered credit unions with more than enough time to make the necessary system changes, and provide guidance and training to implement the 2015 Final Rule by January 1, 2020.

Additionally, while the Board recognizes that CECL will have an impact on some credit unions' financial posture, it does not believe it is necessary or appropriate to wait until the implementation of the standard to implement the 2015 Final Rule's risk-based capital requirements, as some commenters requested. Under the 2015 Final Rule, all allowance for loan and lease loss (ALLL) accounts are captured in the numerator of the risk-based capital ratio, thus implementation of CECL will not be a change in the accounting and classification of the ALLL.[10] Therefore, it is not necessary to delay implementation of risk-based capital to align with the implementation of CECL.

Commenters requested that the delay of the 2015 Final Rule's effective date should also apply to the goodwill and intangible asset deferral period. The 2015 Final Rule provides credit unions with 13 years to write down, or otherwise adjust their balance sheets, to account for goodwill and other intangible assets acquired through a supervisory merger or combination before December 28, 2015.[11] Only 6 credit unions with assets greater than $500 million, report total goodwill and intangible assets of more than 1 percent of assets, and the valuation under Generally Accepted Accounting Principles (GAAP) of these existing assets will be immaterial by the end of the extended sunset date.[12] Accordingly, the Board continues to believe 13 years to respond to this change is more than sufficient for credit unions impacted.

Some commenters requested the effective date of the 2015 Final Rule be delayed to coincide with possible changes to supplemental capital rules. As noted in the 2015 Final Rule, the NCUA plans to address additional forms of supplemental capital in a separate proposed rule. In February 2017, the NCUA issued an advanced notice of proposed rulemaking for alternative capital,[13] 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, with approximately 99 percent of complex credit unions holding enough capital to meet the risk-based capital requirements. Accordingly, the NCUA believes further delay of the 2015 Final Rule to provide time for the implementation of an alternative capital rule is not necessary.

For the reasons discussed above, the NCUA continues to believe that extending the effective date of the 2015 Final Rule by one year is necessary, will benefit the credit union industry and the NCUA, and will not pose an undue risk to the NCUSIF. Accordingly, this final rule amends the 2015 Final Rule to delay its effective date until January 1, 2020.

B. Definition of ''Complex'' Credit Union

Under § 702.103 of the NCUA's 2015 Final Rule, a credit union was defined as ''complex'' and the NCUA's risk-based capital ratio measure was applicable only if the credit union's quarter-end total assets exceeded $100 million, as reflected in its most recent Call Report. Consistent with the spirit and intent of Executive Order 13777, the NCUA further analyzed the impact of the NCUA's risk-based capital requirements and the portfolios of assets and liabilities of credit unions to identify potential ways to reduce regulatory burden on credit unions.[14]

Based on the NCUA's analysis, discussed in more detail below, the Board believed that $500 million in total assets would be a more appropriate threshold level for defining a complex credit union. Increasing the threshold level to $500 million in total assets would reduce regulatory burden on credit unions by more closely tailoring the applicability of the NCUA's risk-based capital requirement to cover only those credit unions that, if they failed, individually could present an undue risk of loss to the NCUSIF. This amendment would exempt an additional 1,026 credit unions—a total of 90 percent [15] of all credit unions—from the 2015 Final Rule's risk-based capital requirements. However, approximately 85 percent of the complex assets and liabilities and 76 percent of the total assets in the credit union system would still be subject to the risk-based capital requirement.[16] Accordingly, consistent with requirements of section 216(d)(1) of the

[6] Commenters referred to secondary capital, supplemental capital, and alternative capital.

[7] *See, e.g.,* Section 701 of H.R. 5841 (If passed, the bill would delay the 2015 Final Rule, which defines complex credit unions as those with greater than $100 million in total assets, for two years past its current effective date.).

[8] Based on December 31, 2017 Call Report Data.

[9] Based on December 31, 2017 Call Report Data. Under the 2015 Final Rule, credit unions with total assets greater than $100 million hold more than 18 percent capital, or 80 percent more than the 10 percent capital required, to be well-capitalized under the risk-based capital standard. Under this final rule 6 credit unions are required to hold additional capital, representing 1 percent of the complex credit unions.

[10] Credit unions can early adopt CECL as soon as 2019; thus, it is not necessary to delay implementation of the 2015 Final Rule's risk-based capital requirements.

[11] 80 FR 66625, 66648, 66707 (Oct. 29, 2015).

[12] Based on December 31, 2017 Call Report Data.

[13] 82 FR 9691 (Feb. 8, 2017).

[14] The Board has always intended to periodically review the threshold of a complex credit union, as noted in the preamble to the 2015 proposed Risk Based Capital Rule. 80 FR 4339, 4378 (January 27, 2015).

[15] Based on December 31, 2017 Call Report data. For comparison, if the threshold were to remain at $100 million about 72 percent of all credit unions would be exempt.

[16] For comparison, if the threshold were to remain at $100 million about 98 percent of the complex assets and liabilities and 93 percent of the total assets in the credit union system would be subject to the risk-based capital requirement.

FCUA, proposed § 702.103 provided that, for purposes of § 702.102, a credit union is defined as ''complex,'' and a risk-based capital ratio requirement is applicable, only if the credit union's quarter-end total assets exceed $500 million, as reflected in its most recent Call Report.

The $100 million asset threshold adopted in the 2015 Final Rule for determining whether a credit union is complex was based on a complexity index (original complexity index or OCI). The OCI counted the number of complex products and services provided by credit unions based on the following indicators:

- Member Business Loans
- Participation Loans
- Interest-Only Loans
- Indirect Loans
- Real Estate Loans
- Non-Federally Guaranteed Student Loans
- Investments with Maturities of Greater than Five Years (where the investments are greater than one percent of total assets)
- Non-Agency Mortgage-Backed Securities
- Non-Mortgage Related Securities With Embedded Options
- Collateralized Mortgage Obligations/ Real Estate Mortgage Investment Conduits
- Commercial Mortgage-Related Securities
- Borrowings (Draws Against Lines of Credit, Borrowing Repurchase Transactions, Other Notes, Promissory Notes, and Interest Payable)
- Repurchase Transactions
- Derivatives
- Internet Banking

As discussed in more detail in the 2015 Final Rule, these products and services were determined by the NCUA to be good indicators of complexity.[17]

The Board proposed revising the original complexity index (revised complexity index or RCI), and to apply a new complexity ratio (complexity ratio or CR) for analyzing the portfolios of assets and liabilities of credit unions to determine which were ''complex.'' The RCI would have amended 6 of the indicators in the original complexity index so the index would more accurately reflect ''complexity'' in credit unions and take into account certain regulatory changes that were made after the 2015 Final Rule was approved. The revised complexity index was the same as the original complexity index, with the following six changes:

- It replaced the indicator for ''member business loans'' with an indicator for ''commercial loans'' to reflect changes to the NCUA's member business lending rule,[18] and current Call Report data collection requirements.
- It replaced the indicator for ''participation loans'' (which included participation loans sold and participation loans held) with an indicator for ''participation loans sold'' to restrict the indicator to the most complex component of participation loans.
- It replaced the indicator for ''interest-only loans'' to exclude first-lien mortgages. The remaining interest only loans include complex payment options. For example, only requiring monthly payments of interest during draw periods.
- It removed the indicator for ''internet banking'' because it has become a typical mechanism for members to transact business with most credit unions, with 78 percent of credit unions engaging in some type of internet banking. Also, it is not an asset or liability—therefore there is no suitable way to translate the volume into a financial measure for purposes of defining complex.
- It removed the indicator for ''investments with maturities greater than five years (where the investments are greater than one percent of total assets)'' because the indicator is adequately captured in the other index components.
- It replaced the indicator for ''real estate loans (where the loans are greater than five percent of assets and/or sold mortgages)'' with an indicator for ''sold mortgages'' to account for the most complex component of real estate loans.

The NCUA believed the revised complexity index would provide a more accurate methodology, based on the assets and liabilities of credit unions, for identifying when credit unions engage in complex activities and defining credit unions as ''complex.'' Among credit unions with $500 million or more in total assets, 100 percent engage in at least one complex activity, and 96 percent engage in three or more complex activities.[19]

In addition to the RCI, the Board also proposed to use a ratio of complex assets and liabilities to total assets (complexity ratio or CR) to evaluate the extent to which credit unions are involved in complex activities. The CR, when used in conjunction with the revised complexity index, took into account the volume of the complex activity engaged in by complex credit unions and provided a more accurate measure of credit union complexity.[20] The numerator of the CR was the dollar value sum of the complex assets and the liabilities held by a credit union, where complex assets and liabilities are determined using the same complexity indicators as used in the RCI. The denominator of the CR was the total assets of the credit union.

Credit unions with greater than $500 million in total assets held complex assets and liabilities as a larger share of their total assets than smaller credit unions.[21] The complexity ratio increased from 23 percent among credit unions with less than $500 million in total assets to 40 percent among credit unions with more than $500 million in total assets. Of the $497 billion in complex assets and liabilities in the credit union system, $423 billion (85 percent)—the majority of complex assets and liabilities in the credit union system—were held among credit unions with more than $500 million in total assets.[22]

Larger credit unions were much more likely to have a significant share of their balance sheet in complex assets and liabilities.[23] Nearly all credit unions (95 percent) with more than $500 million in total assets have complex assets and liabilities greater than 10 percent of their total assets, and 66 percent have

[17] 80 FR 66625, 66663 (Oct. 29, 2015). The 2015 Final Rule states ''For the purpose of defining a complex credit union, assets include tangible and intangible items that are economic resources (products and services) that are expected to produce economic benefit (income), and liabilities are obligations (expenses) the credit union has to outside parties. The Board recognizes there are products and services—which under GAAP are reflected as the credit union's portfolio of assets and liabilities—in which credit unions are engaged that are inherently complex based on the nature of their risk and the expertise and operational demands necessary to manage and administer such activities effectively. Thus, credit unions offering such products and services have complex portfolios of assets and liabilities for purposes of NCUA's risk-based net worth requirement.''

[18] *See* 12 CFR 723.2; *and* 81 FR 13529, 13538 (March 14, 2016).

[19] Based on December 31, 2017 Call Report data.

[20] *See* 80 FR 66625, 66661 (Oct. 29, 2015) (As pointed out by at least one commenter, credit unions should not be considered complex unless complex activities are undertaken in significant volumes. The commenter provided the following example: A credit union that lends a member $60,000 to purchase new equipment for his bakery is engaged in member business lending, but that credit union should not be designated as complex by virtue of that single loan—assuming it is not a significant share of the credit union's assets.).

[21] Based on December 31, 2017 Call Report data.

[22] Credit unions with total assets between $250 million and $500 million hold a higher share of their portfolio in complex assets (32 percent) than the entire group of credit unions below $500 million in total assets (23 percent), but it remains below the share of complex assets in credit unions above $500 million in assets (40 percent).

[23] Based on December 31, 2017 Call Report data.

complex assets and liabilities greater than 30 percent of their total assets.

In general, two-thirds of credit unions with more than $500 million in total assets had complex assets and liabilities ratios above 30 percent. Only 11 percent of credit unions with less than $500 million in total assets had complexity ratios above 30 percent.[24]

Using both the proposed revised complexity index and the proposed complexity ratio to determine the appropriate threshold for defining complex credit unions would have excluded approximately 90 percent of credit unions from the risk-based capital requirement, while still covering approximately 76 percent of the assets held by federally insured credit unions.[25] Moreover, the revised definition of a complex credit union would not have represented undue risk to the NCUSIF, nor significantly decreased the level of complex assets and liabilities covered by the risk-based capital requirement. Even though the percent of total assets covered by the rule would have fallen from 93 percent[26] to 76 percent when compared to the $100 million threshold adopted in the 2015 Final Rule,[27] 85 percent of complex assets and liabilities would have still been covered under the proposal.

In addition, if the historical trends in changes to the composition of the credit union community continue, the NCUA found that the share of total assets covered under the Proposal would have risen in the future, potentially reaching 90 percent of total assets within the next 10 years. The higher asset threshold also would have still captured those credit unions that, if they failed, could have individually presented an undue risk of loss to the NCUSIF. If the historical trends in changes to the composition of the credit union community continue and historical probability of failure and loss given failure rates (excluding fraud related failures) for credit unions with total assets between $100 and $500 million and those with total assets over $500 million remain the same, the NCUA found that total losses to the NCUSIF over the next 10 years would likely be significantly larger for credit unions with more than $500 million in total assets than for those with total assets between $100 million and $500 million.

Under the 2015 Final Rule, an estimated 505 credit unions would have faced higher required capital levels as a result of risk-based capital requirements. These 505 credit unions had total assets of $439 billion and the 2015 Final Rule would have raised their required capital levels by approximately $800 million above what is required by the net worth ratio.[28] Under the proposal, the 284 credit unions with total assets between $100 and $500 million would have no longer have been required to hold higher capital levels as a result of risk-based capital requirements. However, as reflected in Table 1, the Proposal would still capture most of the credit union assets subject to higher capital requirements, and incremental capital required by risk-based capital requirement, under the 2015 Final Rule.

TABLE 1—CREDIT UNIONS BOUND BY RISK-BASED CAPITAL, 2017Q4 CALL REPORT DATA

Asset category	Number of complex credit unions bound by risk-based capital	Capital required over the net worth ratio (million)	Total assets (billion)
Assets $100M–$500M	284	$165	$69
Assets >$500M	221	635	370

Under the Proposal, the NCUA found that exempting credit unions with total assets between $100 million and $500 million represented approximately 16 percent of the total assets of credit unions with required capital levels above what is required by the net worth ratio, and about 21 percent of the incremental capital the system is required to hold under the 2015 Final Rule. The Proposal, however, still encompassed approximately 84 percent of the total assets of credit unions with required capital levels above what was required by the net worth ratio, and almost 80 percent of the incremental capital the system was required to hold under the 2015 Final Rule.

Under the 2015 Final Rule, a net of 20 credit unions with total assets of $11.5 billion would have a lower PCA classification with a capital shortfall of $84 million.[29] Under the proposal, 6 credit unions (net) with total assets of $8.8 billion would have had a lower PCA classification and a capital deficiency of $71 million. Thus, the Proposal encompassed approximately 80 percent of the downgraded credit union assets and approximately 85 percent of the capital shortfall for those institutions.

The Board also noted in the Proposal that the NCUSIF is much stronger today than it was in 2015 when the agency passed the 2015 Final Rule. The equity ratio of the NCUSIF was 1.29 percent in 2015.[30] As of June 30, 2018, the NCUSIF equity ratio was 1.35 percent, including the equity distribution of approximately $736 million paid to credit unions on July 23, 2018.[31] The total funds held in the NCUSIF as of June 30, 2018, are approximately $15 billion after the equity distribution, about $2.6 billion more than the $12.3 billion held in the fund in 2015.[32]

Public Comments on the Proposed Definition of Complex Credit Union

Twelve commenters stated they agreed with increasing the threshold

[24] Credit unions with total assets between $250 million and $500 million are more likely to have a CR greater than 10 percent (88 percent) than the entire group of credit unions below $500 million in total assets (29 percent), but it remains below the share of complex assets in credit unions above $500 million in assets (95 percent). Further, the difference widens significantly for CRs above 10 percent. Less than half (47 percent) of credit unions with total assets between $250 million and $500 million have a CR greater than 30 percent, whereas over two-thirds of credit unions with more than $500 million in total assets have a CR greater than 30 percent.

[25] Based on December 31, 2017 Call Report data.

[26] Based on December 31, 2017 Call Report data, 93 percent of credit union assets would be covered based on the $100 million threshold established by the 2015 Final Rule.

[27] Based on December 31, 2017 Call Report data.

[28] Based on December 31, 2017 Call Report data. It is important to note that almost all of these credit unions already hold enough capital to meet either the risk-based capital requirement or the net-worth-based capital requirement.

[29] Based on December 31, 2017 Call Report Data.

[30] At the time the 2015 Final Rule was approved by the Board.

[31] The June 30, 2018 Retained Earnings was decreased to reflect the equity distribution of $735.7 million payable to insured credit unions in the third quarter of 2018 as declared at the February 2018 Open Board Meeting.

[32] The June 30, 2018 NCUSIF balance is based on the Preliminary and Unaudited Financial Highlights. The 2015 NCUSIF balance at the time the 2015 Final Rule was approved by the Board.

level for defining a credit union as complex from $100 million in total assets to $500 million in total assets as proposed. All but one of the other commenters stated they supported increasing the threshold, but suggested that the threshold level should be higher. Four commenters suggested that the asset size threshold should be increased to $1 billion. One of those commenters pointed out that the NCUA's data shows 53 percent of credit unions with assets between $500 million and $750 million engage in six or more complex activities; however, for credit unions with assets greater than $1 billion, this number increases to 77 percent. In addition, the commenter also suggested that Congress' directive to the NCUA for designing the risk-based capital requirement was to address those risks for which the standard leverage ratio was insufficient and to base its definition of ''complex'' credit unions ''on the portfolios of assets and liabilities of credit unions;'' and that a $1 billion complexity threshold would more closely align with the spirit of the Federal Credit Union Act.

With regard to the proposed $500 million threshold, two commenters stated that the NCUA's data does not provide a complexity ratio categorization at other asset levels. They recommend the NCUA consider how the complexity ratio for credit unions with $500 million in total assets compares to those with $1 billion in total assets, and requested that such information be provided and considered in setting the asset size threshold.

Eleven commenters recommend the threshold level be raised to $10 billion, which they pointed out would align with both the NCUA's Office of National Examinations and Supervision (ONES) and the Bureau of Consumer Financial Protection (BCFP) supervisory authorities. They also suggested a $10 billion threshold would provide several additional credit unions with regulatory relief, while still protecting the NCUSIF from larger, more impactful losses. One commenter suggested that having different asset thresholds among rules from myriad departments and divisions across Federal and state regulatory bodies contributes to duplicative and inconsistent oversight. One commenter suggested that raising the asset threshold for complex credit unions to $10 billion would be consistent with the recommendations of the U.S. Department of Treasury and with the thresholds set by the NCUA and other Federal regulatory agencies.[33] One commenter suggested that a $10 billion threshold was appropriate because of recent easing of regulatory oversight that has taken place in the banking sector. The commenter suggested that with the recent enactment of S.2155, which increased the Dodd-Frank Act threshold for bank holding company enhanced prudential standards from $50 billion in assets to $250 billion, credit unions are increasingly forced to compete with large banking organizations, whose hundreds-of-attorneys-strong compliance and economic departments dwarf the average two to five compliance personnel at a credit union with $500 million in total assets. The commenter suggested further that, even a credit union with $500 million in assets, risk-based capital compliance will be an additional layer of regulatory compliance filings, which removes personnel from the Main Street-focused business of community lending.

One commenter objected to raising the threshold, suggesting that, of the 10 costliest natural person credit union failures to the NCUSIF, nearly all resulted from credit unions with less than $500 million in total assets. In addition, the commenter suggested the proposed increase in the asset size threshold to $500 million in assets would exclude 17 credit unions with CAMEL codes of 4 or 5 and 105 credit unions with a CAMEL code of 3 from the risk-based capital rule, based on March 2018 data. The commenter suggested these 122 credit unions have approximately $21.4 billion in insured shares, and any credit union with a CAMEL code of 3 or more should be subject to a risk-based capital requirement to help limit losses to the NCUSIF arising from the potential failure of these credit unions and future premium assessments to the NCUSIF. The commenter also pointed out that, while credit unions with less than $500 million in total assets may not pose a systemic risk to the NCUSIF, losses to the NCUSIF from the failure of credit unions excluded from the cap could result in premium assessments for all credit unions. As an alternative, the commenter recommended the NCUA should authorize credit unions with at least $100 million in total assets to substitute a higher leverage ratio for the risk-based capital requirement—consistent with section 216 of the Federal Credit Union Act[34] and Section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act,[35] which mandates that the Federal banking agencies establish a community bank leverage ratio of tangible equity to average consolidated assets of not less than eight percent and not more than ten percent for banks with less than $10 billion in total consolidated assets.

Two commenters specifically stated their support for using a single asset-size threshold, based on a complexity index and complexity ratio. One suggested using a single asset-size threshold allows for some differentiation between credit unions without making the rule overly complex. The other suggested that using a single asset-size threshold was appropriate because smaller credit unions do not normally have the size or capacity to make large commercial loans, sell participation loans, or get involved with complex transactions.

Ten commenters specifically objected to using a single asset-size threshold, based on a complexity index and complexity ratio. Four commenters stated that assets should not be the only consideration when assessing the complexity of a credit union because such an approach does not sufficiently capture the risk-based complexities of a given credit union's balance sheet or activities. One stated it was wary of legislative or regulatory thresholds that are foreseeably likely to be outdated nearly as soon as the **Federal Register** ink is dry given the speed of technological innovation. One pointed out that, in the preamble to the proposal, the NCUA stated it will address material-risk capital levels for credit unions $500 million in assets and below through the supervisory process. The commenter suggested that, for credit unions that are deemed ''complex,'' the NCUA should utilize its supervisory authority to exempt, on a case-by-case basis, credit unions whose net worth ratios provide adequate protection from material risks irrespective of asset size. One commenter asked, if a credit union has over $500 million in assets, but has a very low complexity ratio, why should they need to reserve additional capital based on the riskiness of their business? The commenter suggested there should be a threshold complexity ratio, under which a credit union would be exempt from the NCUA's risk-based capital requirement, regardless of asset size. If not, the commenter stated, the

[33] A FINANCIAL SYSTEM THAT CREATES ECONOMIC OPPORTUNITIES: BANKS AND CREDIT UNIONS, U.S. DEP'T OF THE TREASURY 59 (2017) (''NCUA should revise the risk-based capital requirements to only apply to credit unions with total assets in excess of $10 billion or eliminate altogether risk-based capital requirements for credit unions satisfying a 10% simple leverage (net worth) test.''), available at *https://www.treasury.gov/press-center/press-releases/Documents/A%20Financial%20System.pdf.*

[34] 12 U.S.C. 1790d(c)(2).

[35] Public Law 115–174 (May 24, 2018).

complexity ratio is only an after-the-fact measure of risk and not a determinant of whether the risk-based capital requirement applies. The commenter also suggested that such a ratio should allow low-risk credit unions to avoid the extra reserves.

One commenter suggested that the proposed $500 million threshold should be used in combination with the actual operational complexity of individual credit unions, as measured by that credit union's RCI and CR. The commenter provided the following example, the NCUA could tailor the definition of ''complex'' to include only federally insured credit unions with assets above $500 million and an RCI and/or CR value higher than a certain threshold (*e.g.,* an RCI value of 6 or more and/or a CR of at least 45 percent). The commenter suggested this more tailored definition would ensure that credit unions would be treated as ''complex'' based not just on asset size, but also on whether a credit union actually offers a substantial amount of complex products and services.

One commenter recommended that the NCUA annually index any threshold for growth and adopt exemptions from such classification wherever possible, such as for credit unions with more traditional products and services.

One commenter suggested a better approach for identifying complexity would be to look at the business model of the credit union based on its assets and liabilities. The commenter suggested that, at a minimum, the NCUA should require credit unions that have more than a de minimis level of commercial loans be subject to the agency's risk-based capital requirements. One commenter suggested the NCUA's regulation should move to a regulatory and capital regime that recognizes two types of credit unions, those that are complex with assets greater than $500 million and those that are non-complex.

Eight commenters expressed general support for the proposed amendments to the complexity index and the development of the complexity ratio. Seven commenters stated they agreed with the NCUA's proposal to remove the indicator for internet banking from the complexity index because offering such services is not an indication of risk.

Two commenters stated they agreed with the NCUA's proposal to restrict ''participation loans'' to ''participation loans sold'' because doing so properly captures the riskier part of this business. Two commenters stated they agreed with the NCUA's proposal to replace ''member business loans'' (MBL) with ''commercial loans'' to bring this rule into conformity with recent changes in MBL rules. One commenter recommend redefining ''commercial loans'' within the list of complex products and services to exclude inherently less complex categories of such loans based on other existing regulatory requirements already in place to mitigate risks. One commenter agreed with the NCUA's proposal to replace ''real estate loans'' with ''sold mortgages'' because the proposed change better captures risk. One commenter recommended redefining ''real-estate loans'' within the list of complex products and services to exclude inherently less complex categories of such loans based on other existing regulatory requirements already in place to mitigate risks. One commenter stated they disagreed with the NCUA's proposal to remove first lien mortgages from the ''interest only loans'' indicator because interest-only loans are risky, regardless of position.

Discussion of the Definition of Complex Credit Union

Several commenters recommended changing the definition of complexity. The Board established the $500 million total asset size threshold based on the number and volume of credit unions engaged in complex activities. Section 216(d)(1) of the FCUA directs NCUA, in determining which credit unions will be subject to the risk-based net worth requirement, to base its definition of complex ''on the portfolios of assets and liabilities of credit unions.'' The statute does not require, as some commenters have argued, that the Board adopt a definition of ''complex'' that takes into account the portfolio of assets and liabilities of each credit union on an individualized basis. Rather, section 216(d)(1) authorizes the Board to develop a single definition of complexity that takes into account the portfolios of assets and liabilities of all credit unions. The Board is responsible for defining complexity and, as explained in detail above, the NCUA's proposed analysis supports defining complex credit unions as those with assets greater than $500 million in total assets.

As stated in the 2015 Final Rule and the Proposal, the Board continues to believe that using a single asset size threshold is a good proxy for complexity, simplifies the application of the rule, provides regulatory relief for small institutions, and eliminates the potential unintended consequences of having a checklist of activities that would determine whether or not a credit union is subject to the risk-based capital requirement.

Commenters further recommended tying the complexity definition to other regulatory thresholds, such as the $10 billion in total asset threshold used for assigning supervision to the NCUA's ONES and for the BCFP. The Board recognizes that various regulatory agencies, including the NCUA, have differing thresholds for establishing requirements. These thresholds are established based on fundamental elements or objectives of the particular statute or regulation in question. The NCUA set the asset size threshold size at $500 million based on the analysis of the portfolios of assets and liabilities of credit unions discussed above. In addition, it provides a balance between providing reasonable regulatory relief, and protecting the credit union system and the NCUSIF. The proposed $500 million total asset size threshold will provide relief to 90 percent of credit unions while still covering 85 percent of all complex assets and liabilities in the credit union system, and 76 percent of total assets. The NCUA's proposed methodology for determining complexity based on the portfolios of assets and liabilities of credit unions does not support increasing the threshold above $500 million as there is no significantly meaningful difference in the volume and number of complex activities above this level. Moreover, raising the threshold to $10 billion, as some commenters suggested, would only cover approximately 14 percent of the complex assets and liabilities in the credit union system and approximately 15 percent of the total assets in the credit union system.[36] Accordingly, the Board believes raising the proposed threshold further would not be consistent with the results of the NCUA's analysis of the portfolios of the assets and liabilities of credit unions and would impose an undue risk to the NCUSIF by excluding too large a percentage of the assets covered by the risk-based capital requirement.

A number of commenters requested exemptions from the definition of complex under certain circumstances, such as credit unions that do not have a very high complexity ratio, receiving a waiver on a case-by-case basis, or recognizing when a credit union's net worth ratio provides more than adequate protection for the risk. Based on the proposed approach, credit unions that meet the definition of complex must be subject to the risk-based net worth requirement, thus, a waiver provision is not possible. A simplified way of complying with the risk-based net worth requirement, such as a highly

[36] Based on December 31, 2017 Call Report data.

capitalized credit union that is not otherwise a risk outlier, would be outside the scope of this proposal.[37] This suggestion was referred to the NCUA's Regulatory Reform Task Force for further consideration.

As noted previously, the $500 million total asset threshold is based on the NCUA's analysis of the portfolio of assets and liabilities of credit unions. The NCUA's analysis took into account the number and volume of activity engaged in by credit unions. A hybrid approach to defining complexity, for example using an asset threshold in conjunction with a complexity ratio, would likely still result in credit unions with more than $500 million in assets being considered complex. The Board does not agree that only credit unions that are very complex (such as six or more complex activities) should be considered complex, as at least one commenter suggested. Also, a hybrid approach could create unintended consequences for credit unions and the NCUA, would make the rule more difficult to administer, and lead to greater regulatory burden.

A commenter recommended the definition of complexity be tied to a growth index. As required by the statute, the definition of complex is based on the NCUA's analysis of the portfolio of assets and liabilities, as previously discussed. Therefore, it is not appropriate to index the $500 million asset threshold to inflation or some other growth index. However, the Board will continue to periodically update its analysis to ensure the complexity definition reflects changes in the composition of the portfolio of assets and liabilities of credit unions.

Commenters suggested additional analysis be provided at different asset levels to further support the definition of complexity. Table 2 provides additional data on the CR at a number of different asset size thresholds above $500 million. The NCUA concluded in the Proposal that a significant level of complexity exists in credit unions with assets greater than $500 million based on the volume of activity with no meaningful distinction at higher thresholds. The Board continues to believe the $500 million threshold is appropriate as it covers the majority of complex assets and liabilities (85 percent) while providing significant regulatory relief without posing undue risk to the NCUSIF.

TABLE 2—COMPLEXITY RATIO BY ASSET CATEGORIES, 2017Q4 CALL REPORT DATA

Asset category	Complexity ratio >10 (percent)	Complexity ratio >20 (percent)	Complexity ratio >30 (percent)	Complexity ratio >40 (percent)
<$500M	29	18	11	6
$500M-$750M	92	82	58	40
$750M–$1B	96	80	65	47
$1B–$10B	96	86	71	51
>$10B	86	86	71	43

Another commenter states 53 percent of credit unions with assets between $500 million and $750 million engage in six or more complex activities; and at $1 billion this number increases to 77 percent. The commenter is referring to the RCI, as shown in Table 3, which counts the number of complex activities. The Board does not agree that only credit unions that are very complex (such as six or more complex activities) should be considered complex. The Board concludes that a significant level of complexity exists in credit unions with assets greater than $500 million based on the number and volume of complex activities.

TABLE 3—COMPLEXITY INDEX BY ASSET CATEGORIES, 2017Q4 CALL REPORT DATA [38]

Asset category	Number of credit unions	Average index value	Index>=1 (percent)	Index>=2 (percent)	Index>=3 (percent)	Index>=5 (percent)	Index>=6 (percent)
>$500M	5,042	1.5	52	35	24	10	6
$500–$750M	149	5.7	100	98	96	73	53
$750–$1B	95	6.1	100	100	97	79	64
$1B–10B	280	6.9	100	99	96	88	78
$10B+	7	8.6	100	86	86	86	71

One commenter [38] disagreed with raising the threshold for defining a complex credit union. The commenter noted the majority of the ten largest losses to the NCUSIF derived from credit unions (excluding corporate credit unions) below the $500 million threshold. The losses total approximately $723 million based on loss projections at time of the associated credit unions failures. However, the Board notes that nearly one-third of these losses were the result of fraud.[39] Risk-based capital is designed to address credit risk. It is not designed to address fraud. As previously stated, if the historical trends continue, total losses to the NCUSIF over the next 10 years will likely be larger for credit unions with more than $500 million in total assets than for those with assets between $100 million and $500 million in total assets. Accordingly, the Board continues to believe the threshold of $500 million for determining complexity captures most of the risk to the NCUSIF.

The Board disagrees with the commenter who recommended tying the risk-based capital requirements to CAMEL ratings. The CAMEL rating system is not designed to measure the complexity of the portfolio of assets and liabilities of credit unions. Rather, the CAMEL rating reflects the financial and operational condition of the credit

[37] *See, e.g.,* Pub. L. 115–174, 132 Stat. 1296 (2018) (Requiring the Federal banking agencies to establish a ''community bank leverage ratio.'').

[38] Table 3 results differ from the proposed rule as they reflect additional asset categories.

[39] Based on Material Loss Reviews conducted by the NCUA Office of Inspector General.

union on a scale of one to five. Therefore, a credit union rated CAMEL 3, 4, or 5 may not necessarily have a high degree of complexity in the composition of its assets and liabilities.

In drafting the Proposal, the NCUA reviewed the RCI indicators and restricted the indicators to only the most complex components. One commenter stated interest only-real estate loans present risk regardless of lien position. Based on this comment, the NCUA re-ran its complexity analysis with all interest-only real estate loans included in this indicator. There were no significant changes in the percent of credit unions, by total asset threshold, participating in these activities, by number and volume. The analysis continues to support defining complexity as credit unions with assets greater than $500 million. The Board agrees with the commenter's assessment of similar risk attributes and will, going forward, include first–lien, interest-only real estate loans within the interest only loan indicator.

A commenter recommended the Board redefine ''commercial loans'' to exclude inherently less complex categories of such loans. The Board continues to believe the loans defined as ''commercial loans'' in the NCUA's Regulations are complex enough to warrant inclusion as a complexity indicator. ''Commercial loans'' by definition no longer include the less complex components, including but not limited to, 1–4 family residential property secured loans not serving as the borrower's primary residence, or vehicles manufactured for household use.[40] Therefore, the Board will continue to use ''commercial loans,'' as currently defined as an indicator.

For the reasons discussed above, the NCUA continues to believe that $500 million in total assets is an appropriate threshold level for defining a credit union as ''complex,'' thereby subjecting it to the NCUA's risk-based capital requirement. As such, this final rule amends § 702.103 of the 2015 Final Rule to provide that, for purposes of § 702.102, a credit union is defined as ''complex,'' and a risk-based capital ratio requirement is applicable, only if the credit union's quarter-end total assets exceed $500 million, as reflected in its most recent Call Report.

The NCUA will continue to address any deficiencies in the capital levels of credit unions with $500 million or less in assets through the examination process.[41] Sound capital levels are vital to the long-term health of all credit unions. Credit unions need to hold capital commensurate with their risk. Balancing proper capital accumulation with product offering and pricing strategies helps ensure credit unions are able to provide affordable member services over time. Credit unions are already expected to incorporate into their business models and strategic plans provisions for maintaining prudent levels of capital.

IV. Legal Authority

In 1998, Congress enacted the Credit Union Membership Access Act (CUMAA).[42] Section 301 of CUMAA added section 216 to the FCUA,[43] which required the Board to adopt by regulation a system of PCA to restore the net worth of credit unions that become inadequately capitalized.[44] Section 216(b)(1)(A) requires the Board to adopt by regulation a system of PCA for federally insured credit unions ''consistent with'' section 216 of the FCUA and ''comparable to'' section 38 of the Federal Deposit Insurance Act (FDI Act).[45] Section 216(b)(1)(B) requires that the Board, in designing the PCA system, also take into account the ''cooperative character of credit unions'' (*i.e.,* credit unions are not-for-profit cooperatives that do not issue capital stock, must rely on retained earnings to build net worth, and have boards of directors that consist primarily of volunteers).[46] The Board initially implemented the required system of PCA in 2000,[47] primarily in part 702 of the NCUA's Regulations, and most recently made substantial updates to the regulation in October 2015.[48]

The purpose of section 216 of the FCUA is to ''resolve the problems of [federally] insured credit unions at the least possible long-term loss to the [NCUSIF].''[49] To carry out that purpose, Congress set forth a basic structure for PCA in section 216 that consists of three principal components: (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 credit unions defined as ''new;'' and (3) a risk-based net worth requirement to apply to credit unions the NCUA defines as ''complex.''

Among other things, section 216(c) of the FCUA requires the NCUA to use a credit union's net worth ratio to determine its classification among five ''net worth categories'' set forth in the FCUA.[50] Section 216(o) generally defines a credit union's ''net worth'' as its retained earnings balance,[51] and a credit union's ''net worth ratio,'' as the ratio of its net worth to its total assets.[52] As a credit union's net worth ratio declines, so does its classification among the five net worth categories, thus subjecting it to an expanding range of mandatory and discretionary supervisory actions.[53]

Section 216(d)(1) of the FCUA requires that the NCUA's system of PCA include, in addition to the statutorily defined net worth ratio requirement applicable to federally insured natural-person credit unions, ''a risk-based net worth[54] requirement for insured credit unions that are complex, as defined by the Board. . . .''[55] The FCUA directs the NCUA to base its definition of ''complex'' credit unions ''on the portfolios of assets and liabilities of

[40] See 12 CFR 723.2.

[41] See, *e.g.,* § 702.102(b) (Authorizes the NCUA Board to reclassify a well-capitalized credit union as adequately capitalized and may require an adequately capitalized or undercapitalized credit union to comply with certain mandatory or discretionary supervisory actions as if it were classified in the next lower capital category.).

[42] Public Law 105–219, 112 Stat. 913 (1998).

[43] 12 U.S.C. 1790d.

[44] The risk-based net worth requirement for credit unions meeting the definition of ''complex'' was first applied on the basis of data in the Call Report reflecting activity in the first quarter of 2001. 65 FR 44950 (July 20, 2000). The NCUA's risk-based net worth requirement has been largely unchanged since its implementation, with the following limited exceptions: revisions were made to the rule in 2003 to amend the risk-based net worth requirement for MBLs, 68 FR 56537 (Oct. 1, 2003); revisions were made to the rule in 2008 to incorporate a change in the statutory definition of ''net worth,'' 73 FR 72688 (Dec. 1, 2008); revisions were made to the rule in 2011 to expand the definition of ''low-risk assets'' to include debt instruments on which the payment of principal and interest is unconditionally guaranteed by NCUA, 76 FR 16234 (Mar. 23, 2011); and revisions were made in 2013 to exclude credit unions with total assets of $50 million or less from the definition of ''complex'' credit union, 78 FR 4033 (Jan. 18, 2013).

[45] 12 U.S.C. 1790d(b)(1)(A); see also 12 U.S.C. 1831o (Section 38 of the FDI Act setting forth the PCA requirements for banks).

[46] 12 U.S.C. 1790d(b)(1)(B).

[47] 12 CFR part 702; see also 65 FR 8584 (Feb. 18, 2000) and 65 FR 44950 (July 20, 2000).

[48] 80 FR 66625 (Oct. 29, 2015).

[49] 12 U.S.C. 1790d(a)(1).

[50] 12 U.S.C. 1790d(c).

[51] 12 U.S.C. 1790d(o)(2).

[52] 12 U.S.C. 1790d(o)(3).

[53] 12 U.S.C. 1790d(c)–(g); 12 CFR 702.204(a)–(b).

[54] For purposes of this rulemaking, the term ''risk-based net worth requirement'' is used in reference to the statutory requirement for the Board to design a capital standard that accounts for variations in the risk profile of complex credit unions. The term ''risk-based capital ratio'' is used to refer to the specific standards established in the 2015 Final Rule to function as criteria for the statutory risk-based net worth requirement. The term ''risk-based capital ratio'' is also used by the Other Banking Agencies and the international banking community when referring to the types of risk-based requirements that are addressed in the 2015 Final Rule. This change in terminology throughout the Proposal would have no substantive effect on the requirements of the FCUA, and is intended only to reduce confusion for the reader.

[55] 12 U.S.C. 1790d(d)(1).

credit unions.''[56] It also requires the NCUA to design a risk-based net worth requirement to apply to such ''complex'' credit unions.[57]

V. Impact of the Final Rule

This final rule will lower the overall impact of the 2015 Final Rule by reducing the number of credit unions subject to the risk-based capital requirements of the rule. By increasing the threshold for defining a complex credit union from more than $100 million to more than $500 million in assets, an additional 1,026 credit unions would be exempt from the 2015 Final Rule's risk-based capital requirements. This represents significant burden relief for these credit unions. The new definition of complex credit union adopted in this final rule exempts a total of 90 percent (5,042) of all credit unions as of December 31, 2017.[58] For comparison, if the threshold were to remain at $100 million only about 72 percent of all credit unions would be exempt.

While under this final rule 9 out of 10 credit unions would be exempt, these institutions only hold 24 percent of total assets in the credit union system and 15 percent of complex assets and liabilities.[59] Thus, approximately 85 percent of the complex assets and liabilities and 76 percent of the total assets in the credit union system would still be subject to the risk based capital requirement.[60]

The credit unions that are defined as complex under this final rule have estimated aggregate and average risk-based capital ratios of 16.8 and 17.2 percent, respectively. The aggregate risk-weighted assets to total assets ratio is 63 percent for complex credit unions under this final rule.[61] Table 4 shows the distribution of estimated risk-based capital ratios for all complex credit unions based on this final rule.

TABLE 4—DISTRIBUTION OF ESTIMATED RISK-BASED CAPITAL RATIOS FOR COMPLEX CREDIT UNIONS

RBC ratio	<10%	10–13%	13–16%	16–20%	20–30%	30–50%	>50%
# of CUs	7	110	153	144	101	14	2

As shown in Table 4, most complex credit unions will have a risk-based capital ratio well in excess of the 10 percent level required to be well capitalized. Under this final rule, six complex credit unions with total assets of $8.8 billion would have a lower capital classification, with a capital shortfall of approximately $71 million.[62] Overall, 98.7 percent of all complex credit unions are well capitalized under this final rule.

Credit unions often hold some margin above regulatory capital requirements. Table 5 provides a comparison of the margins complex credit unions currently hold in excess of both the net worth ratio requirement and the risk-based capital requirement.

TABLE 5—DISTRIBUTION OF NET WORTH RATIOS AND RISK-BASED CAPITAL RATIOS FOR COMPLEX CREDIT UNIONS

Number of CUs	Less than well capitalized	Well capitalized to well + 2%	Well capitalized + 2% to + 3.5%	Well capitalized + 3.5% to + 5%	Greater than well capitalized + 5%
Net Worth Ratio	<7%	7%–9%	9%–10.5%	10.5%–12%	>12%
RBC Ratio	<10%	10%–12%	12%–13.5%	13.5%–15%	>15%
Net Worth Ratio	2	90	166	141	132
RBC Ratio	7	54	82	88	300

Both measures indicate the large majority of complex credit unions hold margins well above the levels required to be well-capitalized.

The NCUA also analyzed complex credit unions to determine whether the net worth or risk-based capital requirement would require a credit union to hold more dollars of capital. Table 6 summarizes the distribution of credit unions by the ratio of risk-weighted assets to total assets for credit unions bound by each capital requirement.

[56] 12 U.S.C. 1790d(d).

[57] *Id.*

[58] This final rule would limit risk-based capital requirements to only credit unions with assets of more than $500 million compared to the Other Banking Agencies' risk-based capital standards that apply to banks of all sizes. As of December 31, 2017, there were 1,450 and 4,294 FDIC-insured banks with assets of $100 million and $500 million or less, respectively.

[59] Credit unions with assets between $100 million and $500 million make up 17 percent of assets in the credit union system, and only hold 13 percent of complex assets and liabilities.

[60] For comparison, if the threshold were to remain at $100 million about 98 percent of the complex assets and liabilities and 93 percent of the total assets in the credit union system would still be subject to the risk-based capital requirement.

[61] By way of comparison, the bank aggregate total risk-weighted assets to total assets ratio is 72.4 percent as of December 31, 2017. Further, complex credit unions maintain a median risk-based capital ratio of 15.8 percent compared to a bank median risk-based capital ratio of 15.9 percent. Bank comparisons exclude banks with less than $50 million in total assets and more than $60 billion in total assets to arrive at a more comparable asset profile to credit unions.

[62] Of the 531 impacted credit unions, only 7, or 1.3 percent, would have less than the 10 percent risk-based capital requirement to be well capitalized. Of these, one has a net worth ratio less than 7 percent and is therefore not a new downgrade in capital classification, but already categorized as less than well capitalized. If the asset threshold for the definition of complex credit union remained at $100 million, a net of 20 credit unions with total assets of $11.5 billion would have a lower capital classification, with a capital shortfall of approximately $84 million.

TABLE 6—DISTRIBUTION OF RISK-WEIGHTED ASSETS TO TOTAL ASSETS RATIOS FOR COMPLEX CREDIT UNIONS BY GOVERNING CAPITAL REQUIREMENT

	Total number	Risk weighted assets/total assets						
		Avg. (%)	<50%	50–60%	60–70%	70–80%	80–90%	>90%
# Bound by Net Worth Ratio	310	58.9	49	101	147	10	2	1
# Bound by Risk Based Capital	221	71.9	0	3	81	128	6	3

Forty-two percent of complex credit unions (221 complex credit unions with $370.3 billion in total assets) are estimated to have a higher minimum capital requirement in terms of dollars under the risk-based capital ratio than the net worth ratio.[63] These 221 complex credit unions have a notably higher risk profile than the other 310 complex credit unions. The ratio of average risk weighted assets to total assets for the 221 complex credit unions is 72 percent, compared with 59 percent for the remaining 310 complex credit unions. Therefore, relative to what qualifies as capital for risk-based capital purposes, these institutions must hold more net worth in dollars to achieve a well-capitalized designation over what the net worth ratio requires.

In addition, despite holding a greater share of risk-weighted assets, the risk-based capital-bound group of 221 complex credit unions also has, on average, a net worth ratio that is 100 basis point below the net worth ratio of the other 310 complex credit unions.[64] Table 6 highlights the distribution of credit unions by risk weighted assets to total assets depending on whether the risk-based capital requirement necessitates more capital than the net worth ratio. The risk-based capital-bound group of 221 complex credit unions would have to retain more net worth in dollars than what is currently required under the net worth ratio to satisfy the well-capitalized threshold. However, over 97 percent (215) of these institutions already hold more than enough capital to meet the risk-based capital requirement.

[63] The required dollar amount for risk based capital is calculated as [(risk-weighted assets times 10 percent) − allowance for loan losses − equity acquired in merger + total adjusted retained earnings acquired through business combinations + NCUA share insurance capitalization deposit + goodwill + identifiable intangible assets] − (total assets × 7 percent). Complex credit unions in Table 6 are categorized by whichever calculation results in a higher dollar volume.

[64] The average net worth ratio is 10.3 percent for the 212 complex credit unions bound by risk-based capital while the average net worth ratio for the 310 complex credit unions bound by the net worth ratio is 11.4 percent.

VI. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a final rule, an agency prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of the final 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)[65] and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule.

The amendments to the 2015 Final Rule and part 702 affect only complex credit unions, which were those with greater than $100 million in assets under the 2015 Final Rule and, as amended, are now only those with greater than $500 million in assets under this final rule. As a result, credit unions with $100 million or less in total assets would not be affected by this final rule. Accordingly, the NCUA certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that the Office of Management and Budget (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 current, valid OMB control number.

In accordance with the PRA, the information collection requirements included in this final rule has been submitted to OMB for approval under control number 3133–0191.[66]

[65] *See* 80 FR 57512 (Sept. 24, 2015).

[66] Proposed revisions to OMB control number 3133–0191 have been submitted to OMB for approval in accordance with 5 CFR 1320.11.

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 final 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 a material impact for purposes of Executive Order 13132.

Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on October 18, 2018.

Gerard Poliquin,

Secretary of the Board.

For the reasons discussed above, the Board further amends 12 CFR part 702, as amended in the final rule published at 80 FR 66625 (Oct. 29, 2015), 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.

§ 702.103 [Amended]

■ 2. Amend § 702.103 by removing the words ''one hundred million dollars ($100,000,000)'' and adding in their place ''five hundred million dollars ($500,000,000).''

[FR Doc. 2018–24171 Filed 11–5–18; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Maximum Allowable 7(a) Fixed Interest Rates

AGENCY: U.S. Small Business Administration.

ACTION: Notification announcing the maximum allowable fixed interest rates.

SUMMARY: This document announces the maximum allowable fixed interest rates for 7(a) guaranteed loans.

DATES: This announcement of interest rates is effective November 6, 2018.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter, Acting Chief, 7(a) Loan Program and Policy Branch, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; telephone: (202) 205–7654; email: *robert.carpenter@sba.gov;* or the Lender Relations Specialist in the local Small Business Administration (SBA) District Office. The local SBA District Office may be found at *https://www.sba.gov/tools/local-assistance/districtoffices.*

SUPPLEMENTARY INFORMATION:

Agency regulations at 13 CFR 120.213(a), Fixed Rates for Guaranteed Loans, state that ''[a] loan may have a reasonable fixed interest rate. SBA periodically publishes the maximum allowable rate in the **Federal Register**.''

On September 30, 2009, SBA published a **Federal Register** Notice (74 FR 50263) establishing the use of the London Interbank Offered Rate (LIBOR) (as defined in 13 CFR 120.214(c)), plus 300 basis points, plus the average of the 5-year and 10-year LIBOR swap rates, as the SBA ''Fixed Base Rate.'' According to the September 30, 2009 Notice, the maximum allowable fixed interest rate for 7(a) loans (other than SBA Express and Export Express loans) was the Fixed Base Rate, plus a maximum allowable spread based on the term of the loan, plus an additional spread for very small loans.

On July 27, 2017, the U.K. Financial Conduct Authority announced that it would phase-out LIBOR by the end of 2021. No generally accepted replacement for LIBOR has been identified. To address the approaching sunset of LIBOR and the need for a new benchmark for the calculation of the maximum allowable fixed interest rate for a 7(a) loan, SBA will use the prime rate (Prime), as described in 13 CFR 120.214(c), as the base rate for determining the maximum allowable fixed interest rate for 7(a) loans (including SBA Express and Export Express loans).

SBA reviewed and compared the interest rate difference between the Fixed Base Rate and Prime from October 1, 2009 through August 1, 2018. The Fixed Base Rate was, on average, approximately 200 basis points higher than Prime during this period and, as of August 2018, the Fixed Base Rate was approximately 300 basis points higher than Prime. To address this difference, SBA is increasing the maximum allowable spread as follows: For 7(a) fixed rate loans of $250,000 or less, SBA is setting the maximum allowable spread over Prime at 6% (plus the additional spread permitted under 13 CFR 120.215 for very small loans). For 7(a) fixed rate loans over $250,000, SBA is setting the maximum allowable spread over Prime at 5%. The maximum allowable spread will no longer depend on the term of the loan.

The increase in the maximum allowable spread neutralizes the impact of replacing the Fixed Base Rate with Prime. A new fixed rate maximum also provides greater opportunity for Lenders to make loans using fixed rates and may offset the cost of underwriting, disbursing, and servicing loans of $250,000 or less. SBA notes that the higher maximum interest rates permitted under 13 CFR 120.215 for very small loans (*i.e.,* loans under $50,000) continue to apply.

The interest rates set forth in this Notice are applicable to all 7(a) fixed rate loans (including fixed rate SBA Express and Export Express loans [1]), with the exception of the Export Working Capital Program [2] (EWCP) loans and Community Advantage loans. This Notice does not affect the allowable base rates used for variable rate loans as described in 13 CFR 120.214(c). SBA will address the variable rate bases, including a replacement for the LIBOR base rate, in a future rulemaking.

Effective November 6, 2018, for any complete 7(a) loan application received by SBA or any request for an SBA Loan Number submitted by a Lender with delegated authority (including fixed rate SBA Express and Export Express loans and excluding EWCP loans and Community Advantage loans), the maximum allowable fixed interest rate will be the Prime rate in effect on the first business day of the month plus:

(i) 600 basis points for loans of $25,000 or less, plus the 200 basis points permitted by 13 CFR 120.215;

(ii) 600 basis points for loans over $25,000 but not exceeding $50,000, plus the 100 basis points permitted by 13 CFR 120.215;

(iii) 600 basis points for loans greater than $50,000, up to and including $250,000; or

(iv) 500 basis points for loans over $250,000.

The following examples compare the maximum fixed rate that was in effect during August 2018 with the maximum fixed rate established by this Notice, had it been in effect at that time:

Example 1: For a 7(a) loan (other than SBA Express or Export Express) in the amount of $200,000 with a 7-year maturity, the maximum allowable fixed interest rate was 10.88% [8.13% (SBA Fixed Base Rate for August 2018 based on LIBOR) + 2.75% (SBA maximum spread for loans over $50,000 with a maturity of 7 years or longer)].

The new maximum allowable fixed rate for the same loan would be 11.00% [5.00% (Prime rate for August 2018) + 6.00% (maximum spread over Prime for a fixed rate loan greater than $50,000, but less than $250,000, regardless of the maturity)].

Example 2: For an SBA Express or Export Express loan in the amount of $200,000, the maximum allowable fixed interest rate was 9.5% [5.00% (Prime rate for August 2018) + 4.5% (maximum spread over Prime for an SBA Express or Export Express loan over $50,000, regardless of maturity)].

The new maximum allowable fixed rate for the same loan would be 11.00% [5.00% (Prime rate for August 2018) + 6.00% (maximum spread over Prime for a fixed rate loan greater than $50,000, but less than $250,000, regardless of the maturity)].

Example 3: For a 7(a) loan (other than SBA Express or Export Express) in the amount of $350,000 with less than a 7-year maturity, the maximum allowable fixed interest rate was 10.38% [8.13%

[1] It should be noted that SBA's recently published proposed rule for the Express loan programs contemplates certain maximum fixed interest rates for SBA Express and Export Express loans. See 83 FR 49001 (September 28, 2018). Notwithstanding the proposed rule, today's Notice regarding Maximum Allowable 7(a) Fixed Interest Rates sets the maximum allowable fixed interest rates for SBA Express and Export Express loans at the same levels as the maximum fixed rates allowable for 7(a) loans generally. SBA will reflect any necessary changes when it finalizes the proposed rule.

[2] In accordance with 13 CFR 120.344(c), ''SBA does not prescribe the interest rates for the EWCP, but will monitor these rates for reasonableness.''