

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Parts 700, 701, 703, 704, and 713

RIN 3133-AF32

#### CAMELS Rating System

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Board is proposing to add the “S” (Sensitivity to Market Risk) component to the existing CAMEL rating system and redefine the “L” (Liquidity Risk) component, thus updating the rating system from CAMEL to CAMELS. The proposal to add the “S” component will enhance transparency and allow the NCUA, State Supervisory Authorities, and federally insured credit unions to better distinguish between liquidity risk (“L”) and sensitivity to market risk (“S”). The amendment would also enhance consistency between the regulation of credit unions and other financial institutions. The Board is proposing to implement the addition of the “S” rating component and a redefined “L” rating as early as the first quarter of 2022.

**DATES:** Comments must be received on or before May 10, 2021.

**ADDRESSES:** You may submit comments 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 Website:* <http://www.ncua.gov/>

- *RegulationsOpinionsLaws/proposed\_regs/proposed\_regs.html.* Follow the instructions for submitting comments.

- *Email:* Send messages to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Use the subject line: “[Your name] Comments on Notice of Proposed Rulemaking Regarding CAMELS Rating System.”

- *Fax:* (703) 518–6319. Include “[Your name] Comments on Notice of Proposed Rulemaking Regarding CAMELS Rating System” on the cover page.

- *USPS/Hand Delivery/Courier:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

*Public Inspection:* All public comments will be made available on the NCUA’s website (<http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx>) 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.

**FOR FURTHER INFORMATION CONTACT:** Thomas Fay, Director of Capital Markets at (703) 518–1179 or Robert Bruneau, Senior Capital Markets Specialist at 703 945–2491, Office of Examination and Insurance, or Marvin Shaw, Staff Attorney Office of General Counsel at (703) 518–6554.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The NCUA adopted its current rating system, known as CAMEL, in 1987.<sup>1</sup> The current CAMEL rating is based upon an evaluation of five critical elements of a credit union’s operations: Capital adequacy, asset quality, management, earnings, and liquidity and asset-liability management. CAMEL is designed to take into account and reflect all significant financial, operational, and management factors examiners assess in their evaluation of a credit union’s performance and risk profile.

Under this system, the NCUA assigns each credit union a composite CAMEL rating based on the agency’s evaluation and rating of five components of an institution’s financial condition and operations. As specified in the 2007 Letter to Credit Unions,<sup>2</sup> these components address a credit union’s:

- Capital adequacy;
- Asset quality;
- Management;
- Earnings; and

<sup>1</sup> NCUA Letter No. 93. Letter to Credit Unions, (September 25, 1987).

<sup>2</sup> NCUA Letter to Credit Unions 07–CU–12 (Dec. 2007).

- Liquidity and asset liability management.

Examiners assign composite and component CAMEL ratings using a scale that ranges from “1” to “5.” The highest rating is a “1,” indicating the strongest performance and risk management practices, and the least degree of supervisory concern. The lowest rating is a “5,” indicating the weakest performance, inadequate risk management practices, and the highest degree of supervisory concern. When evaluating these components, examiners use their professional judgement and consider both qualitative and quantitative factors when analyzing a credit unions performance.

In 1997, members of the Federal Financial Institution Examination Council (FFIEC),<sup>3</sup> with the exception of the NCUA, proposed and subsequently adopted revisions to the Uniform Financial Institutions Rating System (UFIRS) and a Policy Statement that reaffirmed the five CAMEL rating system components and added a sixth component, Sensitivity to Market Risk (“S”), to address price and interest rate risks (IRR).<sup>4</sup> The NCUA opted not to use the “S” component and retained its existing CAMEL rating system based on the relative lack of complexity in the consolidated balance sheets of credit unions at the time. However, since 1997, credit unions have increased in size and complexity by significantly increasing their mortgage-related assets from 19 percent of total assets to 42 percent at September 2020.

The NCUA has made several pertinent modifications to the CAMEL rating system since 1997. These involve changes to financial ratios,<sup>5</sup> adding and subsequently eliminating a CAMEL matrix,<sup>6</sup> accommodating the adoption of Prompt Corrective Action (PCA),<sup>7</sup> and

<sup>3</sup> At the time, the FFIEC was comprised of the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve (Federal Reserve), and the Office of Comptroller of the Currency (OCC), the NCUA, and the Office of Thrift Supervision (OTS). OTS merged into OCC as a result of the Dodd Frank Wall Street Reform and Consumer Protection Act. See Section 312 of Public Law 111–203.

<sup>4</sup> 62 FR 752, (Jan. 6, 1997).

<sup>5</sup> Letter to Credit Unions 00–CU–08 (Nov. 2000).

<sup>6</sup> NCUA Letter to Credit Unions 07–CU–12 (Dec. 2007).

<sup>7</sup> In 1998, Congress enacted the Credit Union Membership Access Act (“CUMAA”). (Pub. L. 105–219, 112 Stat. 913 (1998)). CUMAA amended the Federal Credit Union Act (“the Act”) to require the

incorporating the NCUA's risk-focused exam approach.<sup>8</sup>

As balance sheets of credit unions have become larger and more complex, the NCUA consistently provided supervision and guidance regarding exposures to market risk to the credit union industry. The NCUA also advised credit unions that IRR was a supervisory priority from 2012 through 2019.

Since 2012, the Board implemented regulations that introduced standards and expectations affecting examiner procedures and the NCUA's IRR assessment requirements. The NCUA's IRR rule became effective for credit unions in September 2012.<sup>9</sup> The rule requires credit unions that have more than \$50 million in assets to maintain a written IRR policy and an effective risk management program. The NCUA also finalized its derivatives rule in April 2014 providing authority for qualified federal credit unions to use financial derivatives to conduct hedging activities to better optimize their interest rate risk management.<sup>10</sup>

The NCUA also implemented its revised IRR supervision program in January 2017<sup>11</sup> incorporating the regulatory requirements from parts 741 (IRR) and 703 (derivatives), enhancing examiner guidance, improving the consistency of IRR ratings, and to identify outlier credit unions with excessive risk levels.

## II. Rationale for Proposed Rule

The NCUA's existing CAMEL rating process addresses both sensitivity to market risk and liquidity risk within the "L" component.<sup>12</sup> While there is an interrelationship between sensitivity to market risk and liquidity risk, there are also differences that support separating the risks into distinct components. The proposed rule would enhance the existing CAMEL rating system by adding an "S" component to assess sensitivity to market risk and modify the "L" component to include only liquidity evaluation content and rating criteria.

Adding an "S" component and modifying the "L" component will provide greater clarity and transparency

NCUA to adopt, by regulation, a system of prompt corrective action (PCA) consisting of minimum capital standards and corresponding remedies to improve the net worth of federally-insured "natural person" credit unions.

<sup>8</sup> NCUA Letter to Credit Unions –03–CU–04 (March 2003).

<sup>9</sup> 77 FR 5155 (Feb. 2, 2012).

<sup>10</sup> 79 FR 5228 (Jan. 31, 2014).

<sup>11</sup> *Revised Interest Rate Risk Supervision* National Credit Union Administration ([ncua.gov](https://www.ncua.gov)) 16–CU–08/October 2016.

<sup>12</sup> NCUA Letter to Credit Unions 07–CU–12, *CAMEL Rating System*. (Dec. 2007).

regarding credit unions' sensitivity to market risk and liquidity risk exposures. The proposed addition would make the NCUA's rating system more consistent with the other financial institution regulators' ratings system both at the federal and state levels.<sup>13</sup>

Separating the "S" and "L" component ratings will allow NCUA to enhance the:

- Monitoring of sensitivity to market risk and liquidity risk in the credit union system;
- Communication of specific concerns to individual credit unions; and
- Allocation of resources.

Evaluating, rating, and disclosing assessments of interest rate and liquidity risks to credit union management is a long-standing examination procedure at the NCUA. The proposed change to add the "S" provides greater transparency into the NCUA's evaluation and conclusions regarding these two risks.

In 2015, the NCUA Office of Inspector General (OIG) recommended the addition of an "S" component to better capture a credit union's sensitivity to market risk and improve clarity and transparency in the CAMEL rating system.<sup>14</sup> The NCUA OIG also recommended the NCUA revise its "L" component rating to reflect only liquidity factors.

Also in 2015, the NCUA initiated a comprehensive restructuring of its supervision activities through the Enterprise Solution Modernization program (ESM). The ESM is a multi-year introduction of emerging and secure technology solutions supporting the NCUA's examination, data collection, and reporting efforts to improve key, integrated business processes. The NCUA planned the implementation of the OIG's 2015 CAMELS recommendations as part of the development of a new examination platform, known as the Modern Examination and Risk Identification Tool, or MERIT. The NCUA anticipates completing the transition from its legacy examination software to MERIT (which has been configured to support the "S" in "CAMELS") in 2021. Other revisions to examiner supervision guidance and procedures will also be updated as part of the transition.

In general, the NCUA Board expects that adopting a sixth CAMELS rating

<sup>13</sup> The banking regulators (Federal Reserve, FDIC, and OCC) each include the "S" component to evaluate sensitivity to market place risk. In addition, 24 state supervisory authorities adopted the "S" component.

<sup>14</sup> OIG–15–11 *Review of NCUA's Interest Rate Risk Program*.

component will not have any adverse effect on a credit union's CAMEL composite rating. The proposed separation of sensitivity to market risk and liquidity risk into individual CAMELS rating components will reduce potential rating inconsistencies. Currently, examiners combine the risk evaluation of these related, but separate, risk areas into the "L" component. The separation into two components provides greater clarity of the assessment of each risk area. The Board anticipates the agency can make this transition smoothly and without significant disruption to the exam process or agency operations as early as the first quarter of 2022.

## III. Summary of the Proposed Rule

The Board is proposing to add the "S" component to the existing CAMEL rating system and redefine the current "L" component. Evaluation of these as individual components will enhance the communication and monitoring of credit unions' sensitivity to market risk and liquidity risk. The Board is requesting comments on this proposal, such as, but not limited to, the definitions of both the "L" and "S" components and the criteria for each of the specific 1–5 assigned ratings. For example, the Board may consider modifying the rating descriptions used for the "L" and "S" ratings used by the other banking agencies rating system (The Uniform Financial Institutions Rating System (UFIRS)), detailed below in Sections IIA and IIB of this proposal.<sup>15</sup>

### A. "S" Component for Sensitivity to Market Risk

The sensitivity to market risk reflects the exposure of a credit union's current and prospective earnings level and economic capital position arising from changes in market prices and the general level of interest rates. Effective risk management programs include comprehensive interest rate risk policies, appropriate and identifiable risk limits, clearly defined risk mitigation strategies, and a suitable governance framework.

Sensitivity to Market Risk ratings are based on, but not limited to, the following evaluation factors:

- Sensitivity of a credit union's current and future earnings and economic value of capital to adverse changes in market prices and interest rates;

- Management's ability to identify, measure, monitor, and control exposure

<sup>15</sup> <https://www.fdic.gov/regulations/laws/rules/5000-900.html>.

to market risk considering a credit union’s size, complexity, and risk profile; and

- The nature and complexity of interest rate risk exposure. Examiners will rate a credit union’s “S” CAMELS rating component on a

scale of “1” to “5” using the same rating descriptions for “S” as the other banking agencies.

“S” rating	Description
1 .....	<ul style="list-style-type: none"> <li>• Market risk sensitivity is well controlled and that there is minimal potential that the earnings performance or capital position will be adversely affected;</li> <li>• Risk management practices are strong for the size, sophistication, and market risk accepted by the institution; and</li> <li>• The level of earnings and capital provide substantial support for the degree of market risk taken by the institution.</li> </ul>
2 .....	<ul style="list-style-type: none"> <li>• Market risk sensitivity is adequately controlled and that there is only moderate potential that the earnings performance or capital position will be adversely affected;</li> <li>• Risk management practices are satisfactory for the size, sophistication, and market risk accepted by the institution; and</li> <li>• The level of earnings and capital provide adequate support for the degree of market risk taken by the institution.</li> </ul>
3 .....	<ul style="list-style-type: none"> <li>• Control of market risk sensitivity needs improvement or that there is significant potential that the earnings performance or capital position will be adversely affected;</li> <li>• Risk management practices need to be improved given the size, sophistication, and level of market risk accepted by the institution; and</li> <li>• The level of earnings and capital may not adequately support the degree of market risk taken by the institution.</li> </ul>
4 .....	<ul style="list-style-type: none"> <li>• Control of market risk sensitivity is unacceptable or that there is high potential that the earnings performance or capital position will be adversely affected;</li> <li>• Risk management practices are deficient for the size, sophistication, and level of market risk accepted by the institution; and</li> <li>• The level of earnings and capital provide inadequate support for the degree of market risk taken by the institution.</li> </ul>
5 .....	<ul style="list-style-type: none"> <li>• Control of market risk sensitivity is unacceptable or that the level of market risk taken by the institution is an imminent threat to its viability; and</li> <li>• Risk management practices are wholly inadequate for the size, sophistication, and level of market risk accepted by the institution.</li> </ul>

The Board also requests comments on the proposal to describing the “L” component and the criteria used in determining the 1–5 assigned ratings.

*B. “L” Component for Liquidity Risk*

In evaluating the adequacy of a credit union’s liquidity profile, examiners consider the current and prospective sources of liquidity compared to funding needs and the adequacy of liquidity risk management relative to a credit union’s size, complexity, and risk profile. A credit union’s liquidity risk management practices should ensure the credit union maintains sufficient

liquidity to timely meet its financial obligations and member share and loan demands. These practices should reflect the credit union’s ability to manage unplanned changes in funding sources, changes in market conditions affecting its ability to quickly liquidate assets with minimal loss, ensure liquidity is maintained at a reasonable cost and limit reliance on funding sources that may not be available in times of financial stress or adverse changes in market conditions.

A credit union’s liquidity risk management practices should also be

commensurate with the complexity of the balance sheet and its capital adequacy. This includes evaluating the reporting mechanisms in place to monitor and control risk, management’s response when risk exposure approaches or exceeds the credit union’s risk limits, and the prescribed corrective action taken when necessary.

Examiners will rate a credit union’s “L” CAMELS rating component on a scale of “1” to “5” using the same rating descriptions for “L” as the other banking agencies.

“L” rating	Description
1 .....	<ul style="list-style-type: none"> <li>• Strong liquidity levels and well-developed funds management practices; and</li> <li>• The institution has reliable access to sufficient sources of funds on favorable terms to meet present and anticipated liquidity needs.</li> </ul>
2 .....	<ul style="list-style-type: none"> <li>• Satisfactory liquidity levels and funds management practices;</li> <li>• The institution has access to sufficient sources of funds on acceptable terms to meet present and anticipated liquidity needs; and</li> <li>• Modest weaknesses may be evident in funds management practices.</li> </ul>
3 .....	<ul style="list-style-type: none"> <li>• Liquidity levels or funds management practices in need of improvement; and</li> <li>• Institutions rated 3 may lack ready access to funds on reasonable terms or may evidence significant weaknesses in funds management practices.</li> </ul>
4 .....	<ul style="list-style-type: none"> <li>• Deficient liquidity levels or inadequate funds management practices; and</li> <li>• Institutions rated 4 may not have or be able to obtain a sufficient volume of funds on reasonable terms to meet liquidity needs.</li> </ul>
5 .....	<ul style="list-style-type: none"> <li>• Liquidity levels or funds management practices so critically deficient that the continued viability of the institution is threatened; and</li> <li>• Institutions rated 5 require immediate external financial assistance to meet maturing obligations or other liquidity needs.</li> </ul>

The CAMEL rating system is not set forth in a separate section or part in the NCUA’s regulations. Rather, references to CAMEL appear in several parts in the

Code of Federal Regulations (CFR). NCUA regulations regularly refer to CAMEL composite “1” or “2” rated credit unions, which indicate the ability

to safely support additional regulatory flexibility, or CAMEL composite “4” or “5” rated credit unions, which warrant increased regulatory scrutiny.

The Board is planning technical amendments to the following sections in which the term “CAMEL” appears by changing the term to “CAMELS.” These sections include:

- Section 700.2 definition of “Troubled condition”
- Section 701.14 Change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition
- Section 701.23 Purchase, sale, and pledge of eligible obligations
- Section 703.13 Permissible investment activities
- Section 703.14 Permissible investments
- Section 703.108 Eligibility
- Section 704.4 Prompt corrective action
- Section 713.6 Fidelity Bond and Insurance Coverage for FCUS—What is the permissible deductible?

In addition to amendments in the CFR, the Board notes the agency will modify certain documents and systems related to its supervisory activities to reflect the addition of the “S” CAMEL rating component.

#### IV. Regulatory Procedures

##### A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.<sup>16</sup> For purposes of this analysis, the NCUA considers small credit unions to be those having under \$100 million in assets.<sup>17</sup> This rule would not affect FCUs regardless of asset size because it is not adding any substantive requirement. Accordingly, the associated cost is minimal. The NCUA certifies the rule will not have a significant economic impact on small credit unions.

##### B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (“PRA”) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.<sup>18</sup> For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. This proposed rule imposes no new paperwork-related requirements. Therefore, this proposed rule will not create new paperwork

burdens or modify any existing paperwork burdens.

##### C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined this rule does not constitute a policy that has federalism implications for purposes of the executive order.

##### D. 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.<sup>19</sup>

#### List of Subjects

##### 12 CFR Part 700

Credit unions.

##### 12 CFR Part 701

Credit unions. Insurance. Reporting and recordkeeping requirements.

##### 12 CFR Part 703

Credit unions. Investments. Reporting and recordkeeping requirements.

##### 12 CFR Part 704

Corporate Credit Unions, Prompt Corrective Action.

##### 12 CFR Part 713

Bonds. Credit unions. Insurance.

By the National Credit Union Administration Board on January 14, 2021  
**Melane Conyers-Ausbrooks,**  
*Secretary of the Board.*

For the reasons discussed above, the Board proposes to amend 12 CFR parts 700, 701, 703, 704, and 713 as follows:

#### PART 700—DEFINITIONS

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

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

<sup>19</sup> Public Law 105–277, 112 Stat. 2681 (1998).

#### § 700.2 [Amended]

- 2. In § 700.2, amend the definition of “troubled condition”, by removing the word, “CAMEL”, and adding, in its place, the word, “CAMELS”, wherever it appears.

#### PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

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

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1788, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

#### § 701.14 [Amended]

- 4. Amend § 701.14(b) by removing the word, “CAMEL”, and adding, in its place, the word, “CAMELS”, wherever it appears.

#### § 701.23 [Amended]

- 5. Amend § 701.23(b)(2) by removing the word, “CAMEL”, and adding, in its place, the word, “CAMELS.”

#### PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

- 6. The authority citation for part 703 continues to read as follows:

**Authority:** 12 U.S.C. 1757(7), 1757(8), and 1757(15).

#### § 703.13 [Amended]

- 7. Amend § 703.13(d)(3)(iii) by removing the word, “CAMEL”, and adding, in its place, the word, “CAMELS.”

#### § 703.14 [Amended]

- 8. Amend § 703.14 by removing the word, “CAMEL”, and adding, in its place, the word, “CAMELS”, wherever it appears.

#### PART 704—CORPORATE CREDIT UNIONS

- 9. The authority citation for part 704 continues to read as follows:

**Authority:** 12 U.S.C. 1766(a), 1781, 1789.

#### § 704.4 [Amended]

- 10. Amend § 704.4(d)(3)(ii) by removing the word, “CAMEL”, and adding, in its place, the word, “CAMELS.”

#### PART 713—FIDELITY BOND AND INSURANCE COVERAGE FOR FEDERAL INSURED CREDIT UNIONS

- 11. The authority citation for part 713 continues to read as follows:

<sup>16</sup> 5 U.S.C. 603(a).

<sup>17</sup> Interpretive Ruling and Policy Statement (“IRPS”) 03–2, 68 FR 31949 (May 29, 2003) as amended by IRPS 13–1, 78 FR 4032 (Jan. 18, 2013).

<sup>18</sup> 44 U.S.C. 3507(d); 5 CFR part 1320.

**Authority:** 12 U.S.C. 1761a, 1761b, 1766(a), 1766(h), 1789(a)(11).

### § 713.6 [Amended]

■ 12. Amend § 713.6 by removing the word, “CAMEL”, and adding, in its place, the word, “CAMELS”, wherever it appears.

[FR Doc. 2021–01396 Filed 3–8–21; 8:45 am]

BILLING CODE 7535–01–P

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Parts 702 and 703

[NCUA–2021–0010]

RIN 3133–AF35

### Simplification of Risk Based Capital Requirements

**AGENCY:** National Credit Union Administration.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The National Credit Union Administration (NCUA) Board (Board) is issuing this advance notice of proposed rulemaking (ANPR) to solicit comments on two approaches to simplify its risk-based capital requirements. The Board’s risk-based capital requirements are set forth in a final rule dated October 29, 2015, which is currently scheduled to become effective on January 1, 2022. The delayed effective date has provided the Board with additional time to evaluate the capital standards for federally-insured credit unions (FICUs) that are classified as “complex” (those with total assets greater than \$500 million). The first approach would replace the risk-based capital rule with a Risk-based Leverage Ratio (RBLR) requirement, which uses relevant risk attribute thresholds to determine which complex credit unions would be required to hold additional capital (buffers). The second approach would retain the 2015 risk-based capital rule but enable eligible complex FICUs to opt-in to a “complex credit union leverage ratio” (CCULR) framework to meet all regulatory capital requirements. The CCULR approach would be modeled on the “Community Bank Leverage Ratio” framework, which is available to certain banks.

**DATES:** Comments must be received on or before May 10, 2021.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. The docket number for this advance notice of

proposed rulemaking is NCUA–2021–0010. Follow the instructions for submitting comments.

- *Fax:* (703) 518–6319. Include “[Your name] Comments on ‘Simplification of Risk Based Capital Requirements’” in the transmittal.
- *Mail:* Address to Melane Conyers Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

- *Hand Delivery/Courier:* Same as mail address.

*Public inspection:* All public comments are available on the Federal eRulemaking Portal at <http://www.regulations.gov> as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information.

Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA’s law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518–6540 or emailing [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

#### FOR FURTHER INFORMATION CONTACT:

*Policy:* Thomas Fay, Director, Division of Capital Markets, Office of Examination and Insurance, at (703) 518–1179; *Legal:* Rachel Ackmann, at (703) 548–2601 or Ariel Pereira, at (703) 548–2778; or by mail at National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. This ANPR
- III. Legal Authority
- IV. Risk-Based Leverage Ratio (RBLR)
- V. Complex Credit Union Leverage Ratio (CCULR)
- VI. Timeline
- VII. Conclusion

#### I. Background

Capital adequacy standards are a prudential tool to protect the safety and soundness of individual credit unions and the credit union system as a whole. Capital serves as a buffer for credit unions to prevent institutional failure during times of stress. During a financial crisis, a buffer can mean the difference between the financial institution surviving or failing. Higher levels of capital insulate credit unions from the effects of adverse developments in assets and liabilities, allowing credit unions to continue to serve as credit providers during times of stress without government intervention. Higher levels of capital also reduce the probability of a systemic crisis, producing benefits

that generally outweigh the associated costs.

On August 7, 1998, Congress enacted the Credit Union Membership Access Act (CUMAA).<sup>1</sup> CUMAA addressed credit union capital adequacy standards by adding section 216 to the Federal Credit Union Act (FCUA).<sup>2</sup> Section 216 directed the Board to adopt a regulation to establish a system of prompt corrective action (PCA) to restore the net worth of all FICUs if they are inadequately capitalized. Section 216 requires supervisory actions indexed to five statutory net worth categories, ranging from well capitalized to critically undercapitalized. The mandatory actions and conditions triggering conservatorship and liquidation are expressly prescribed by statute.<sup>3</sup> To supplement the mandatory actions, section 216 charged the NCUA with developing discretionary actions which are comparable to the discretionary safeguards available under section 38 of the Federal Deposit Insurance Act—the statute that applies PCA to other federally insured depository institutions.<sup>4</sup>

Section 216(d)(1) of the FCUA requires that the NCUA’s PCA system include, in addition to the statutorily defined net worth ratio requirement, “a risk-based net worth requirement” for credit unions that are complex, as defined by the Board.<sup>5</sup> The FCUA directs the NCUA to base its definition of “complex” credit unions “on the portfolios of assets and liabilities of credit unions.”<sup>6</sup> If a credit union is not classified as complex, as defined by the NCUA, it is not subject to a risk-based net worth requirement. The NCUA implemented the regulatory PCA system mandated by section 216 through a final rule published on February 18, 2000.<sup>7</sup> The NCUA’s PCA regulations are codified in 12 CFR part 702.

Following the 2007–2009 recession, the NCUA substantially reevaluated the capital adequacy standards codified in part 702. On October 29, 2015, the Board published a final rule restructuring the PCA regulations (2015 Final Rule).<sup>8</sup> The overarching intent of

<sup>1</sup> Public Law 105–219, 112 Stat. 913 (1998).

<sup>2</sup> The FCUA is codified at 12 U.S.C. 1751 *et seq.* Section 216 of the act is codified at 12 U.S.C. 1790d.

<sup>3</sup> 12 U.S.C. 1790d(e), (f), (g), (i); 12 U.S.C. 1786(h)(1)(F), 1787(a)(3)(A).

<sup>4</sup> 12 U.S.C. 1790d(b)(1)(A). Section 38 of the FDI Act, 12 U.S.C. 1831o, was added by section 131 of the Federal Deposit Insurance Corporation Improvement Act, Public Law 102–242, 105 Stat. 2236 (1991).

<sup>5</sup> 12 U.S.C. 1790d(d)(1).

<sup>6</sup> 12 U.S.C. 1790d(d).

<sup>7</sup> 65 FR 8560 (Feb. 18, 2000).

<sup>8</sup> 80 FR 66626 (Oct. 29, 2015).