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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 702 and 723

RIN 3133-AG16

Treatment of Emergency Amendments: Paycheck Protection Program Liquidity Facility and Paycheck Protection Program Loans

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is issuing a final rule adopting as final the revisions to the capital adequacy rule and the member business lending rule made under an interim final rule (IFR) published in the *Federal Register* on April 27, 2020.

DATES: The final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: John H. Brolin, Senior Staff Attorney, Office of General Counsel, at (703) 518-6540 or at 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) into law.[1] The law provided aid to the U.S. economy during the COVID-19 pandemic. The CARES Act authorized the Small Business Administration (SBA) to create a loan guarantee program, the Paycheck Protection Program (PPP), in response to the economic impact of the COVID-19

[1] Public Law 116-136 (May 27, 2020).

pandemic on small businesses. The PPP helped participating businesses meet payroll needs and utilities, including employee salaries, sick leave, other paid leave, and health insurance expenses. Provided that credit union lenders complied with the applicable lender obligations set forth in the SBA's interim final rule (IFR), the SBA fully guaranteed loans issued under the PPP. Most federally insured credit unions (FICUs) were eligible to make PPP loans to members.[2] Under the CARES Act, PPP loans received a zero percent risk weighting under the NCUA's risk-based capital requirements.[3]

On April 27, 2020, the Board issued an IFR (April 27th IFR) to make a conforming amendment to its capital adequacy regulation following the enactment of the CARES Act.[4] As noted, the CARES Act required that, under the NCUA's risk-based capital requirements, PPP loans receive a zero percent risk weighting. To reflect the statutory requirement, the April 27th IFR amended the NCUA's capital adequacy regulation to provide that covered PPP loans receive a zero percent risk weight. The April 27th IFR also provided that the covered loan could be excluded from a credit union's accounting of total assets in its net worth ratio calculation if the covered loan was pledged as collateral for a non-recourse loan that was provided as part of the Board of Governors of the Federal Reserve System's (FRB) PPP Loan Facility. The April 27th IFR also made a conforming amendment to the definition of commercial loan in the NCUA's member business loans and commercial lending rule. The Board found good cause to issue the April 27th IFR without advance notice-and-comment procedures and with an effective date upon publication.

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[2] Credit unions permitted to make loans under the SBA's 7(a) program were automatically approved to make PPP loans. FICUs that were not current SBA 7(a) lenders could receive approval by applying to the SBA, unless they were currently designated as being in troubled condition or subject to a formal enforcement action that addressed unsafe and unsound lending practices. Non-depository financing providers, such as credit union service organizations, could qualify as PPP lenders subject to the requirements listed in the IFR.

[3] Public Law 116-136 (Mar. 27, 2020).

[4] 85 FR 23212 (Apr. 27, 2020).

This rule adopts as final the revisions to the capital adequacy rule and the member business lending rule published in the Federal Register on April 27, 2020.[5] The Board is adopting this IFR as final. Under this final rule, FICUs may continue to assign a zero percent risk weight to PPP loans under the NCUA's risk-based capital regulations and neutralize the regulatory capital effects of participating in the PPP Liquidity Facility (PPP Loan Facility). Because the IFR was effective immediately upon publication and the final rule does not require affected parties to adjust their behavior before the final rule takes effect, the Board is issuing this final rule to address the types of matters described in this paragraph with an immediate effective date.[6]

B. Legal Authority

The Board has the legal authority to issue this final rule pursuant to its plenary rulemaking authority under the Federal Credit Union Act and its specific rulemaking authority under the various provisions the Board administers.[7]

II. Final Rule

A. Zero Percent Risk Weight for PPP Loans

The NCUA's April 27th IFR amended the NCUA's risk-based net worth rules to reflect the requirement that PPP loans receive a zero percent risk weight. In particular, the IFR classified PPP loans as low-risk assets. Under prior § 702.106(d), low-risk assets received a zero percent risk weight.[8] In addition, § 702.104(d) defined low-risk assets as cash on hand (for example, coin and currency, including vault, ATM and teller cash), the National Credit Union Share Insurance Fund deposit, debt instruments unconditionally guaranteed by the NCUA, and loans issued under the SBA's PPP.[9] Thus, the April 27th

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[5] 85 FR 23212 (Apr. 27, 2020).
[6] 5 U.S.C. 553(d)(3).
[7] 12 U.S.C. 1766, 1789.
[8] 12 CFR 702.106(d).
[9] 15 U.S.C. 636(a)(36).

IFR provided that PPP loans received a zero percent risk weight under the NCUA's risk-based capital rules as required by the CARES Act.

The NCUA's 2015 final rule regarding risk-based capital (2015 Final Rule)[10] went into effect on January 1, 2022,[11] making substantial changes to the NCUA's previous prompt corrective action (PCA) requirements under part 702 of the NCUA's regulations. Among other changes, the 2015 Final Rule eliminated the definition of "low risk asset" under § 702.104(d). To account for this change, in a December 23, 2021, final rule on capital adequacy (December 2021 Final Rule), the NCUA gave covered loans issued under the SBA's PPP a zero percent risk weight.[12] This amendment finalized the change made to the previous PCA regulations by the April 27th IFR, thus this final rule does not affect the changes that were made by the NCUA's December 2021 Final Rule and no further amendment is required.

B. Definition of Total Assets for Purposes of Calculating the Net Worth Ratio

Pursuant to section 13(3) of the Federal Reserve Act, the FRB authorized each of the Federal Reserve Banks to participate in the PPP Loan Facility as a means to provide liquidity to small business lenders and the broader credit markets, help stabilize the financial system, and provide economic relief to small businesses nationwide.[13] Through the PPP Loan Facility, each of the Federal Reserve Banks extended non-recourse loans to eligible financial institutions to fund PPP loans. Under this construct, only PPP loans that were guaranteed by the SBA with respect to both principal and interest and were originated by an eligible institution could be pledged as collateral to the Federal Reserve Banks. Participation in the PPP Loan Facility affected a FICU's balance sheet because, as a function of participating in the PPP Loan Facility, the FICU was required to originate

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[10] 80 FR 66626 (Oct. 29, 2015).

[11] 84 FR 68781 (Dec. 17, 2019).

[12] 86 FR 72784, 72801 (Dec. 23, 2021).

[13] 12 U.S.C. 343(3).

and hold PPP covered loans (that is, assets that are eligible collateral pledged to the Federal Reserve Banks) on its balance sheet.

As a result, FICUs that participated in the PPP Loan Facility could potentially be subject to increased regulatory capital requirements due to the increase in total assets from originating and holding PPP loans. To facilitate use of the PPP Loan Facility, the April 27th IFR allowed FICUs to neutralize the regulatory capital effects of PPP loans pledged to the PPP Loan Facility.[14]

Additionally, the Board believed that holding credit unions to the regulatory capital requirements for those PPP loans did not reflect the substantial protections (including the non-recourse nature of the FRB's extension of credit to a FICU) from risk provided to credit unions by the PPP Loan Facility. The Board believed that it was appropriate to exclude pledged PPP loans from regulatory capital.[15] Accordingly, the April 27th IFR excluded PPP loans pledged as collateral to the PPP Loan Facility from the definition of total assets in § 702.2 for purposes of calculating a FICU's net worth ratio.

As discussed previously, when the NCUA's 2015 Final Rule[16] went into effect on January 1, 2022,[17] it made substantial changes to the NCUA's PCA requirements under part 702 of the NCUA's regulations. Among other changes, the 2015 Final Rule eliminated the PPP loan provision that had been added by the April 27th IFR under the

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[14] The Office of the Comptroller of the Currency, the FRB, and the Federal Deposit Insurance Corporation adopted a similar IFR to allow banking organizations to neutralize the regulatory capital effects of participating in the PPP Loan Facility. *See,* 85 FR 20387 (Apr. 13, 2020).

[15] The Board has broad authority to define the term "total assets." While 12 U.S.C. 1790d defines "net worth"—the numerator for determining the net worth ratio—it does not define the term "total assets," which comprises the denominator of the equation. However, the Board has elected to define the term in part 702. In addition to the Board's broad authority to define the term "total assets," the Board finds that given the unique and unprecedented nature of the COVID-19 pandemic, encouraging use of the PPP Loan Facility by excluding pledged PPP loans from total assets would further the purpose of section 1790d. Pledged covered PPP loans present less risk and would potentially facilitate resolving the problems of credit unions at the least possible long-term cost to the National Credit Union Share Insurance Fund compared to non-pledged covered PPP loans.

[16] 80 FR 66626 (Oct. 29, 2015).

[17] 84 FR 68781 (Dec. 17, 2019).

definition of "total assets."[18] To account for this change, the definition of total assets in 12 CFR 702.2 was amended by the NCUA's December 2021 Final Rule to carry forward the PPP-related change made in the April 27th IFR. Specifically, under the NCUA's December 2021 Final Rule, the definition of total assets in current § 702.2 was amended to explicitly state that PPP loans pledged to the FRB's PPP Loan Facility to support PPP lending are excluded from the definition of total assets.[19] This finalized the change to the definition made by the April 27th IFR. Accordingly, this final rule does not affect the changes that were already made final by the NCUA's December 2021 Final Rule.[20]

C. Definition of Commercial Loan

The April 27th IFR clarified that PPP loans would not constitute commercial loans under part 723 of the NCUA's regulations. Commercial loans are generally defined as any loan, line of credit, or letter of credit (including any unfunded commitments), and any interest a credit union obtains in such loans made by another lender, to individuals, sole proprietorships, partnerships, corporations, or other business enterprises for commercial, industrial, agricultural, or professional purposes, but not for personal expenditure purposes.[21]

The current definition also provides various exclusions. The April 27th IFR amended the commercial loan definition to add PPP loans issued under the CARES Act as an exclusion from the definition of commercial loan in § 723.2. While other federally guaranteed loans may still be considered commercial loans under the regulation, the unique nature of PPP loans mitigates the need for enhanced commercial underwriting of these loans. The SBA's IFR specifically limits each lender's underwriting obligation

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[18] Specifically, the 2020 IFR updated the previously effective § 702.2 and the definition of total assets; however, the IFR did not update the definition of total assets that became effective on January 1, 2022.

[19] 86 FR 72784, 72802 (Dec. 23, 2021).

[20] *Id*.

[21] 12 CFR 723.2.

under the PPP to the items noted in the rule.[22] Lenders are also held harmless for any borrower's failure to comply with PPP criteria and, in addition to the 100 percent guarantee, PPP loans may qualify for loan forgiveness.

The NCUA received no comments opposing this amendment made by the April 27th IFR to the definition of commercial loan in § 723.2. Commenters generally discussed that PPP loans are unique and the rules governing the PPP loans specifically limited the lender's underwriting responsibilities. One commenter said that applying the enhanced due diligence of the NCUA's part 723 to these loans is of little supervisory benefit. For these reasons, the Board is adopting as final the changes made to the definition of commercial loan made by the IFR. Accordingly, this rule makes final the sentence in the definition of "commercial loan" under § 723.2, that excludes from the definition covered loans issued under the SBA's PPP.[23]

Regulatory Procedures

A. Executive Orders 12866, 13563, 14192

Pursuant to Executive Order 12866 ("Regulatory Planning and Review"), a determination must be made whether a regulatory action is significant and therefore subject to review by the Office of Information and Regulatory Affairs (OIRA), within the Office of Management and Budget (OMB) in accordance with the requirements of the Executive Order.[24] Executive Order 13563 ("Improving Regulation and Regulatory Review") supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866.[25] This final rule was drafted and reviewed in accordance with Executive Order 12866 and Executive

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[22] *See*, https://www.sba.gov/document/policy-guidance--ppp-interim-final-rule.
[23] 15 U.S.C. 636(a)(36).
[24] 58 FR 51735 (Oct. 4, 1993).
[25] 76 FR 3821 (Jan.21, 2011).

Order 13563. OIRA has determined that this final rule is not a "significant regulatory action" as defined by section 3(f) of Executive Order 12866.

Executive Order 14192 ("Unleashing Prosperity Through Deregulation") requires that any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.[26] This final rule is not an Executive Order 14192 regulatory action because this rule is not significant under Executive Order 12866. This final rule is considered an Executive Order 14192 deregulatory action.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include credit unions with assets less than $100 million)[27] and publishes its certification and a short, explanatory statement in the *Federal Register* together with the rule. Moreover, rules for which notice and comment procedures are not required are not subject to the RFA's requirements, including conducting a regulatory flexibility analysis.[28] Consistent with the APA,[29] the Board determined for good cause in the IFR finalized by this rulemaking that general notice and opportunity for public comment is unnecessary and, therefore, the Board did not issue a notice of proposed rulemaking. Accordingly, the Board has concluded that the

[26] 90 FR 9065 (Feb. 6, 2025).
[27] *See* 80 FR 57512 (Sept. 24, 2015).
[28] 5 U.S.C. 603 and 604.
[29] 5 U.S.C. 553(b)(3)(B).

RFA's requirements relating to initial and final regulatory flexibility analyses do not apply.

Nevertheless, the Board fully considered the potential economic impact of the regulatory changes during the development of the rule. As noted in the preamble, the final rule adopts as final the amendments made by an IFR. The rule will not impose any new significant burden on FICUs. Accordingly, the NCUA certifies that this final rule will not have a significant economic impact on a substantial number of small FICUs.

C. The Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) generally provides that an agency may not conduct or sponsor, and not withstanding any other provision of law, a person is not required to respond to, a collection of information, unless it displays a currently valid Office of Management and Budget control number. The PRA applies to rulemakings in which an agency creates a new or amends existing information collection requirements. For purposes of the PRA, an information-collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The NCUA has determined that the changes in this notice do not create a new information collection or revise an existing information collection as defined by the PRA.

D. Executive Order 13132 on Federalism

Executive Order 13132 encourages certain agencies to consider the impact of their actions on state and local interests. The NCUA, an agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This rule finalizes the amendments made by the IFR. It does not, however, rise to the level of material impact for purposes of Executive Order 13132 given that the rule makes no forward-looking changes to the NCUA's regulations.

E. 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, Pub. L. 105-277, 112 Stat. 2681 (1998) given that the rule makes no changes to the NCUA's regulations.

F. Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act or CRA) generally provides for congressional review of agency rules.[30] NCUA must submit a report to Congress and the Comptroller General when it issues a final rule, as defined by the CRA.[31] An agency rule, in addition to being subject to congressional oversight, may also be subject to a delayed effective date if the rule is a "major rule." OIRA has determined that this final rule is not a major rule as defined by the CRA.[32]

The delayed effective date required by the CRA does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[33] For the same reasons noted above with respect to an immediate effective date in adopting this final rule, NCUA is adopting the final rule without the delayed effective date generally prescribed under the CRA.

List of Subjects

12 CFR Part 702

Banks, banking, Credit unions, Reporting and recordkeeping requirements.

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[30] 5 U.S.C. 801-808.

[31] 5 U.S.C. 804(3).

[32] 5 U.S.C. 804(2).

[33] 5 U.S.C. 808.

12 CFR Part 723

Credit, Credit unions, Loan programs-business, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board, this 2nd day of November, 2026.

Melane Conyers-Ausbrooks,

Secretary of the Board.

PART 702—CAPITAL ADEQUACY

PART 723—MEMBER BUSINESS LOANS; COMMERCIAL LENDING

Accordingly, the interim rule amending 12 CFR parts 702 and 723, which was published at 85 FR 23212 (Apr. 27, 2020), is adopted as final without change.

[FR Doc. 2026-22538 Filed: 11/3/2026 8:45 am; Publication Date: 11/4/2026]