Commission has promulgated to implement the Federal Election Campaign Act, 52 U.S.C. 30101 through 45 (''FECA''). The Commission is promulgating these corrections without advance notice or an opportunity for comment because they fall under the ''good cause'' exemption of the Administrative Procedure Act (''APA''). 5 U.S.C. 553(b)(B) The Commission finds that notice and comment are unnecessary here because these corrections are merely typographical and technical; they effect no substantive changes to any rule. For the same reason, these corrections fall within the ''good cause'' exception to the delayed effective date provisions of the APA and the Congressional Review Act. 5 U.S.C. 553(d)(3) and 808(2).

Moreover, because these corrections are exempt from the notice and comment procedure of the APA under 5 U.S.C. 553(b), the Commission is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604. *See* 5 U.S.C. 601(2) and 604(a). Nor is the Commission required to submit these revisions for congressional review under FECA, the Presidential Election Campaign Fund Act, 26 U.S.C. 9001 through 13, or the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 through 42. *See* 52 U.S.C. 30111(d)(1) and (4) (providing for congressional review when Commission ''prescribe[s]'' a ''rule of law''); 26 U.S.C. 9009(c)(1) and (4), 9039(c)(1) and (4) (same). Accordingly, these corrections are effective upon publication in the **Federal Register**.

Corrections to FECA Rules in Chapter I of Title 11 of the Code of Federal Regulations

A. Correction to 11 CFR 1.2

In 2018, the Commission relocated to a new building with a different street address. The Commission is updating this section by removing references to the relocation and the Commission's prior address.

B. Correction to 11 CFR 104.2

Most filers now utilize electronic filing rather than paper forms to submit reports to the Commission. Accordingly, the Commission is revising this section to add that forms may be obtained electronically from the Commission's website as well as in paper format at the updated street address identified in the definition of ''Commission'' at § 1.2.

C. Correction to 11 CFR 110.1

The Commission is revising paragraph (b)(3)(ii)(C) of this section because it erroneously refers to § 116.11(b) as the citation for the definition of ''personal loans.'' The correct definition is located at § 116.11(a).

List of Subjects

11 CFR Part 1

Privacy.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

For the reasons set out in the preamble, the Federal Election Commission amends 11 CFR chapter I as follows:

PART 1—PRIVACY ACT

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

Authority: 5 U.S.C. 552a.

■ 2. Amend § 1.2 by revising the definition of ''Commission'' to read as follows:

§ 1.2 Definitions.

* * * * *

Commission means the Federal Election Commission, its Commissioners, and employees. The Commission is located at 1050 First Street NE, Washington, DC 20463. The Commission's website is *www.fec.gov.*

* * * * *

PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (52 U.S.C. 30104)

■ 3. The authority citation for part 104 continues to read as follows:

Authority: 52 U.S.C. 30101(1), 30101(8), 30101(9), 30102(g) and (i), 30104, 30111(a)(8) and (b), 30114, 30116, 36 U.S.C. 510.

§ 104.2 [Amended]

■ 4. Amend § 104.2(b) by adding ''*https://www.fec.gov/help-candidates-and-committees/forms/* or at'' before the words ''the street address identified''.

PART—110 CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

■ 5. The authority citation for part 110 continues to read as follows:

Authority: 52 U.S.C. 30101(8), 30101(9), 30102(c)(2) and (g), 30104(i)(3), 30111(a)(8), 30116, 30118, 30120, 30121, 30122, 30123, 30124, and 36 U.S.C. 510.

§ 110.1 [Amended]

■ 6. Amend § 110.1(b)(3)(ii)(C) by removing ''116.11(b)'' and adding in its place ''116.11(a)''.

Dated: December 20, 2021.

On behalf of the Commission,

Ellen L. Weintraub,

Commissioner, Federal Election Commission.

[FR Doc. 2021–27885 Filed 12–22–21; 8:45 am]

BILLING CODE 6715–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 702 and 703

RIN 3133–AF12

Capital Adequacy: The Complex Credit Union Leverage Ratio; Risk-Based Capital

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This final rule provides a simplified measure of capital adequacy for federally insured, natural-person credit unions (credit unions) classified as complex (those with total assets greater than $500 million). Under the final rule, a complex credit union that maintains a minimum net worth ratio, and that meets other qualifying criteria, is eligible to opt into the complex credit union leverage ratio (CCULR) framework if they have a minimum net worth ratio of nine percent. A complex credit union that opts into the CCULR framework need not calculate a risk-based capital ratio under the NCUA Board's October 29, 2015 risk-based capital final rule, as amended on October 18, 2018. A qualifying complex credit union that opts into the CCULR framework and maintains the minimum net worth ratio is considered well capitalized. The final rule also makes several amendments to update the NCUA's October 29, 2015 risk-based capital final rule, including addressing asset securitizations issued by credit unions, clarifying the treatment of off-balance sheet exposures, deducting certain mortgage servicing assets from a complex credit union's risk-based capital numerator, revising the treatment of goodwill, and amending other asset risk weights.

DATES: The final rule is effective January 1, 2022.

FOR FURTHER INFORMATION CONTACT: *Policy and Accounting:* 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:

Table of Contents

I. Background

A. The NCUA'S Risk-Based Capital Requirements

The NCUA ensures the safety and soundness of federally insured credit unions (FICUs) by examining and supervising federally chartered credit unions (FCUs); participating in the examination and supervision of federally insured, state-chartered credit unions in coordination with state regulators; and insuring members' accounts at all FICUs up to the statutorily prescribed limits.

Capital adequacy standards are an important prudential tool to ensure 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 and dramatic deleveraging during times of stress. During a financial crisis, a buffer can mean the difference between the survival or failure of a financial institution. Capital levels commensurate with risk insulate credit unions from the effects of unexpected adverse developments in their financial condition, reduce the probability of a systemic crisis, allow credit unions to continue to serve as credit providers during times of stress without government intervention, and provide benefits that outweigh the associated costs.

Following the 2007–2009 recession, the NCUA substantially reevaluated its capital adequacy standards, which are codified in 12 CFR part 702. On October 29, 2015, as amended on October 18, 2018, the NCUA Board (Board) published a final rule restructuring its capital adequacy regulations (2015 Final Rule).[1] The effective date of the 2015 Final Rule was originally January 1, 2019. The overarching intent of the 2015 Final Rule was to reduce the likelihood that a relatively small number of high-risk credit unions would exhaust their capital and cause large losses to the National Credit Union Share Insurance Fund (NCUSIF). Under the Federal Credit Union Act (FCUA), FICUs are collectively responsible for capitalizing and replenishing losses to the NCUSIF.[2] The 2015 Final Rule restructured the NCUA's current capital adequacy regulations and made various revisions, including amending the agency's risk-based net worth requirement by replacing a credit union's risk-based net worth ratio with a risk-based capital ratio. The risk-based capital requirements in the 2015 Final Rule are more consistent with the NCUA's risk-based capital ratio measure for corporate credit unions, consistent with the FCUA, and more comparable to the risk-based capital measures implemented by the Federal Deposit Insurance Corporation (FDIC), Board of Governors of the Federal Reserve System (Federal Reserve Board), and Office of the Comptroller of Currency (OCC) (collectively, the other banking agencies) in 2013.[3]

On November 6, 2018, the Board published a supplemental final rule that raised the threshold level for a complex credit union to $500 million (2018 Supplemental Rule).[4] The 2018 Supplemental Rule also delayed the effective date of the 2015 Final Rule for one year (from January 1, 2019, to January 1, 2020).

The effective date was delayed a second time through a final rule published on December 17, 2019 (2019 Supplemental Rule).[5] The 2015 Final Rule is now scheduled to become effective on January 1, 2022. The delay has provided credit unions and the NCUA with additional time to implement the 2015 Final Rule. Further, as explained in the 2019 Supplemental Rule, the delay enabled the Board to holistically and comprehensively evaluate the NCUA's capital standards for credit unions.[6] Among the items highlighted by the Board for possible consideration during the delay were adoption of a community bank leverage ratio (CBLR) analogue, the treatment of asset securitizations issued by credit unions, finalization of the Subordinated Debt rule and implementation of the current expected credit loss (CECL) standard.[7]

B. The Other Banking Agencies' Risk-Based Capital and CBLR Framework

As discussed in the proposed rule, the other banking agencies adopted in 2013 a revised risk-based capital rule, which was designed to strengthen their capital requirements and improve risk sensitivity.

In 2018, section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act directed the other banking agencies to propose a simplified, alternative measure of capital adequacy for certain federally insured banks.[8] On November 13, 2019, the other banking agencies issued a final rule implementing this statutory directive (CBLR Final Rule).[9]

Under the CBLR Final Rule, the CBLR framework is an option for depository institutions and depository institution holding companies that meet the following criteria:

[1] 80 FR 66626 (Oct. 29, 2015). *See also,* 83 FR 55467 (Oct. 18, 2018).

[2] *See* 12 U.S.C. 1782(c). The FCUA requires each insured credit union to pay an insurance premium equal to a percentage of the credit union's insured shares when the Board, subject to statutory parameters, assesses a premium. The FCUA also requires each insured credit union to pay and maintain a deposit with the NCUSIF equaling one percent of the credit union's insured shares. The NCUSIF's funds are available to pay share insurance claims, to aid in connection with the liquidation or threatened liquidation of credit unions, and for administrative and other expenses the Board incurs in carrying out the purposes of the share insurance subchapter of the FCUA. *See* 12 U.S.C. 1783(a).

[3] The Federal Reserve Board and OCC issued a joint final rule on October 11, 2013 (78 FR 62018), and the FDIC issued a substantially identical interim final rule on September 10, 2013 (78 FR 55340). On April 14, 2014 (79 FR 20754), the FDIC adopted the interim final rule as a final rule with no substantive changes.

[4] 83 FR 55467 (Nov. 6, 2018).

[5] 84 FR 68781 (Dec. 17, 2019).

[6] *Id.* at 68782.

[7] *Id.*

[8] Public Law 115–174 (May 24, 2018). Section 201 is codified at 12 U.S.C. 5371 note.

[9] 84 FR 61776 (Nov. 13, 2019).

(1) A CBLR greater than nine percent;[10]

(2) Total consolidated assets of less than $10 billion;[11]

(3) Total off-balance sheet exposures of 25 percent or less of its total consolidated assets;

(4) Trading assets plus trading liabilities of five percent or less of its total consolidated assets; and

(5) Not an advanced approaches banking organization (advanced approaches banking organizations are generally those with at least $250 billion in total consolidated assets or at least $10 billion in total on-balance sheet foreign exposure, and depository institution subsidiaries of those firms).

In March 2020, the CBLR was temporarily set to eight percent by statute.[12] Accordingly, effective the second quarter of 2020, the CBLR requirement was eight percent or greater.[13] In early 2021, the CBLR requirement was increased to 8.5 percent or greater. During the grace period, the minimum requirement is 7.5 percent.[14] Effective January 1, 2022, the CBLR requirement will return to nine percent and the minimum requirement during the grace period will return to eight percent.

C. The NCUA's Advance Notice of Proposed Rulemaking

At its January 14, 2021 meeting, the Board issued an advance notice of proposed rulemaking and solicited comments on two approaches to simplify the 2015 Final Rule.[15] Almost all commenters supported the stated goal of simplifying the 2015 Final Rule. In general, commenters favored the NCUA developing a CCULR complement to risk-based capital. Almost all commenters who favored the CCULR framework noted that its flexibility is attributable to the option complex credit unions have in calculating the more complex risk-based capital measure, which produces a more precise, and generally lower, overall capital requirement. A few commenters also stated that a benefit of the CCULR framework is its similarity to the capital framework of the other banking agencies.

II. Legal Authority

This final rule provides a simple measure of capital adequacy for credit unions classified as complex based on the principles of the CBLR framework. The CCULR relieves complex credit unions that meet specified qualifying criteria from having to calculate the risk-based capital ratio.[16] In exchange, the credit union is required to maintain a higher net worth ratio than is otherwise required for the well-capitalized classification. This trade-off is akin to the decision qualifying community banks make under the CBLR. A qualifying complex credit union that has a net worth ratio of nine percent or greater is eligible to opt into the CCULR framework.

The Board received no comments on its legal authority to issue the final rule and thus affirms its conclusions and interpretations in the proposed rule. The Board is issuing this final rule pursuant to its authority under the FCUA. The FCUA grants the NCUA a broad mandate to issue regulations governing both FCUs and all FICUs. Section 120 of the FCUA is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the FCUA.[17] Section 207 of the FCUA is a specific grant of authority over share insurance coverage, conservatorships, and liquidations.[18] Section 209 of the FCUA is a plenary grant of regulatory authority to the Board to issue rules and regulations necessary or appropriate to carry out its role as share insurer for all FICUs.[19] Accordingly, the FCUA grants the Board broad rulemaking authority to ensure that the credit union industry and the NCUSIF remain safe and sound.

The FCUA also expressly grants authority for the Board to develop capital adequacy standards for credit unions. In 1998, Congress enacted the Credit Union Membership Access Act (CUMAA).[20] Section 301 of CUMAA added section 216 to the FCUA,[21] which required the Board to adopt by regulation a system of prompt corrective action (PCA) to resolve the problems of insured credit unions when the net worth of credit unions declines below certain levels.[22] Section 216(b)(1)(A) requires the Board to adopt by regulation a system of PCA for credit unions consistent with section 216 of the FCUA and comparable to section 38 of the Federal Deposit Insurance Act (FDI Act).[23] Section 216(b)(1)(B) requires that the Board, in designing the PCA system, also consider the ''cooperative character of credit unions''.[24] The Board initially implemented the required system of PCA in 2000,[25] primarily in part 702. As discussed previously, the Board most recently made substantial updates to the regulation in the 2015 Final Rule.

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.[26] Section 216(o) generally defines a credit union's net worth as its retained earnings balance as determined under generally accepted accounting principles (GAAP);[27] and a credit union's net worth ratio as the ratio of its net worth to its total assets.[28] As a credit union's net worth ratio declines, so does

[10] Under section 4012 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, 134 Stat. 281 (Mar. 27, 2020), the CBLR was temporarily set to eight percent. *See,* 85 FR 22924 (Apr. 23, 2020). Under the statute, the temporary CBLR of eight percent ended on December 31, 2020. The CBLR transitions back to nine percent on January 1, 2022. *See,* 85 FR 22930 (Apr. 23, 2020).

[11] *See,* 85 FR 77345 (Dec. 2, 2020), providing temporary relief from December 2, 2020 through December 31, 2021 for purposes of determining the asset size of an institution.

[12] Public Law 116–136.

[13] *See,* 85 FR 22924 (Apr. 23, 2020).

[14] *See,* 85 FR 22930 (Apr. 23, 2020). The grace period is the two-calendar quarter period a depository institution or depository institution holding company has to satisfy the requirements to be a qualifying institution or to calculate a risk-based capital ratio.

[15] *See,* 86 FR 13498 (March 9, 2021).

[16] See *Section IV.B. Qualifying Credit Unions* for more information on the qualifying criteria.

[17] 12 U.S.C. 1766(a).

[18] 12 U.S.C. 1787(b)(1).

[19] 12 U.S.C. 1789(a)(11).

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

[21] 12 U.S.C. 1790d.

[22] The risk-based net worth requirement for credit unions meeting the definition of complex was first applied based on 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 member business loans, 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); 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); and revisions were made in 2020 to reflect loans issued under the Paycheck Protection Program, 85 FR 23212 (Apr. 27, 2020).

[23] 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 insured banks). In discussing the statutory requirement for comparability, the 2019 Supplemental Rule stated that ''the FCUA requires the Board to adopt a PCA framework comparable to the PCA framework in the FDI Act. The FCUA, however, does not require the Board to adopt a system of risk-based capital identical to the risk-based capital framework for federally insured banking organizations.''

[24] That is, 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. 12 U.S.C. 1790d(b)(1)(B).

[25] 12 CFR part 702; see also 65 FR 8584 (Feb. 18, 2000) and 65 FR 44950 (July 20, 2000).

[26] 12 U.S.C. 1790d(c).

[27] 12 U.S.C. 1790d(o)(2).

[28] 12 U.S.C. 1790d(o)(3).

its classification among the five net worth categories, thus subjecting it to an expanding range of mandatory and discretionary supervisory actions.[29]

Section 216(d)(1) of the FCUA requires the NCUA's system of PCA include, besides the statutorily defined net worth ratio requirement, ''a risk-based net worth [30] requirement for credit unions that are complex, as defined by the Board.'' [31] The FCUA directs the NCUA to base its definition of complex credit unions ''on the portfolios of assets and liabilities of credit unions.'' [32] 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. Besides granting the NCUA broad authority to determine which credit unions are complex, and thus subject to a risk-based net worth requirement, the FCUA also grants the NCUA broad authority to design a risk-based net worth requirement to apply to such complex credit unions.[33] Specifically, unlike the terms ''net worth'' and ''net worth ratio,'' the term ''risk-based net worth'' is undefined in the FCUA. Accordingly, section 216 grants the Board the authority to design risk-based net worth requirements, so long as the regulations are comparable to those applicable to other federally insured depository institutions and consistent with FCUA requirements.

The CCULR framework is comparable to section 38 of the FDI Act, as implemented by CBLR Final Rule.[34] As discussed previously, section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act amended part of the other banking agencies' capital adequacy framework to direct the other banking agencies to propose a simplified, alternative measure of capital adequacy for certain federally insured banks.[35] The other banking agencies implemented this requirement, including amendments to their PCA regulations under section 38 of the FDI Act, in the CBLR Final Rule.

Besides satisfying the comparability requirement in section 216, the CCULR framework also meets the requirements in section 216 of the FCUA for the NCUA's risk-based net worth framework. Section 216 has two express provisions that authorize an NCUA analogue to the CBLR—the definition of complex credit unions and the mandate for the Board to design a risk-based net worth requirement. In designing its CCULR framework, the Board considered both its legal authority to exclude credit unions from risk-based net worth requirements under the definition of complex, and its authority to design a system of risk-based net worth that includes a higher net worth ratio in place of calculating a ratio based on risk-adjusted assets.[36]

The Board considered its express authority under section 216 to define which credit unions are complex, and thus exclude noncomplex credit unions from the risk-based net worth requirement.[37] The express delegation grants the Board significant discretion to determine which credit unions are considered complex. Under this legal basis, the Board would continue to limit the definition of complex to only those credit unions with quarter-end total assets that exceed $500 million dollars. In using asset size as a proxy for complexity, the Board complied with the statutory directive that the definition of complex be based on the portfolios of assets and liabilities of credit unions. Specifically, the Board relied on a complexity index that counted the number of complex products and services provided by credit unions.[38] The complexity index demonstrated that credit unions with greater than $500 million in total assets held more complex assets and liabilities as a larger share of their total assets than smaller credit unions.[39]

The Board, however, could also have drafted a definition of complex that looks at the individual portfolios of credit unions with total assets greater than $500 million rather than examining the assets and liabilities of credit unions in the aggregate. This approach is also consistent with the statutory provision that the complex definition should be based on the portfolios of assets and liabilities of credit unions. The Board would have used the same qualifying criteria as in the final rule as measures of complexity. If a credit union would otherwise meet the definition of a qualifying credit union, it would be considered not complex. Thus, it would not be subject to risk-based capital, as implemented by the 2015 Final Rule. This alternative approach would have created a functionally equivalent requirement to the one set forth in this final rule, with the only difference being the technical details of the implementing regulatory text in part 702.

The Board also considered its express authority and mandate to design the CCULR on the basis that the CCULR constitutes a risk-based net worth requirement, as required for complex credit unions in section 216(d). As noted previously, the FCUA does not define the term ''risk-based net worth requirement'' and sets forth only general guidelines for the design of the risk-based net worth requirement mandated under section 216(d)(1). Specifically, section 216(d)(2) requires that the Board ''design the risk-based net worth requirement to take account of any material risks against which the net worth ratio required for an insured credit union to be adequately capitalized may not provide adequate protection.'' Under section 216(c)(1)(B) of the FCUA, the net worth ratio required for a credit union to be adequately capitalized is six percent.

[29] 12 U.S.C. 1790d(c)–(g); 12 CFR 702.204(a)–(b).

[30] 12 U.S.C. 1790d(d)(2). 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 risk-based net worth requirement to take account of any material risks against which the net worth ratio required for an insured credit union to be adequately capitalized may not provide adequate protection. 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 final rule would have no substantive effect on the requirements of the FCUA and is intended only to reduce confusion for the reader.

[31] 12 U.S.C. 1790d(d)(1).

[32] 12 U.S.C. 1790d(d).

[33] *Id.*

[34] 12 CFR part 3 (OCC), 12 CFR part 217 (Federal Reserve Board), and 12 CFR part 324 (FDIC).

[35] 12 U.S.C. 5371.

[36] The Board also briefly considered an additional independent legal basis for the CCULR framework. As discussed in the section III.D. Calibration of the CCULR, the CCULR framework results in complex credit unions generally holding more capital than under the 2015 Final Rule. Because of the higher capital requirements under the CCULR framework, the Board also considered whether the framework could be considered an alternative method to demonstrate compliance with the 2015 Final Rule, instead of an alternative measure of risk-based net worth. This approach would be within the Board's general discretion to determine the means and manner by which it measures compliance with its regulations, including the risk-based net worth requirement. Considering the express statutory authority to define complex and design a risk-based net worth framework, however, the Board believes this alternative basis, while valid, is unnecessary to support the final rule.

[37] When Congress expressly authorizes or directs an agency to define a statutory term, it grants the agency broad discretion. Under these circumstances, an agency is permitted to interpret a term so long as its interpretation is not manifestly contrary to the statute. The interpretation need not conform to the ordinary meaning of the term. *See Am. Bankers Ass'n* v. *Nat'l Credit Union Admin.,* 934 F.3d 649, 663 (D.C. Cir. 2019) (''An express delegation of definitional power ''necessarily suggests that Congress did *not* intend the [terms] to be applied in [their] plain meaning sense,'' *Women Involved in Farm Econ.* v. *U.S. Dep't of Agric.,* 876 F.2d 994, 1000 (D.C. Cir. 1989), that they are not ''self-defining,'' *id.,* and that the agency ''enjoy[s] broad discretion'' in how to define them, *Lindeen* v. *SEC,* 825 F.3d 646, 653 (D.C. Cir. 2016)).

[38] *Supra* note 4 at 55470.

[39] *Id.*

The plain language of section 216(d)(2) supports the NCUA's interpretation that Congress intended for the NCUA to design the risk-based net worth requirement to factor any material risks beyond those already addressed through the statutory six percent net worth ratio required for a credit union to be adequately capitalized. In other words, the language in section 216(d)(2) simply identifies the types of risks that the NCUA's risk-based net worth requirement must address—that is, those risks not already addressed by the statutory six percent net worth requirement. Notably, the FCUA does not require the risk-based net worth requirement include risk-adjusted assets as part of its calculation.[40] Instead, the Board interprets ''risk-based'' to require an accounting for risks in some manner—that is, the measure must be based on a consideration of risks—but not any particular manner of doing so.[41] Thus, if the Board determines that the CCULR considers all material risks not addressed by the six percent net worth ratio, then the Board has satisfied the statutory requirements for a risk-based net worth ratio.[42]

The Board believes that either the complex-based approach or the risk-based approach to designing the CCULR framework are supported by the FCUA. The Board, however, chose to draft the final rule under its authority to design a risk-based net worth requirement. The Board believes that considering the CCULR as an alternative way to calculate a risk-based net worth requirement is more straightforward, consistent with the structure of section 216, and simpler for complex credit unions to implement.

III. Proposed Rule

The Board issued the proposed rule to provide a simplified measure of capital adequacy for complex credit unions at its July 22, 2021, meeting.[43] The proposed rule provided for a 60-day comment period that ended on October 15, 2021. The Board received 21 comments from credit unions, both state and federal; credit union leagues and trade associations; a banking trade organization; individuals; and an association of state credit union supervisors. Many of the commenters supported the goal of providing a simplified, alternative measure of capital adequacy for certain highly capitalized complex credit unions. Most commenters, however, expressed some concerns about specific aspects of the proposal. The final rule and a discussion of the Board's responses to the comments are discussed in the following sections.

IV. Final Rule

A. Overview of the CCULR Framework

The final rule provides a simplified measure of capital adequacy for credit unions classified as complex (credit unions with total assets greater than $500 million). Under the final rule, a qualifying complex credit union that meets the minimum CCULR, which is equal to its net worth ratio, is eligible to opt into the CCULR framework and is considered well capitalized. The CCULR framework is based on the principles of the CBLR framework. As discussed previously in this preamble, it relieves complex credit unions that meet specified qualifying criteria and have opted into the CCULR framework from having to calculate a risk-based capital ratio, as implemented by the 2015 Final Rule. In exchange, the qualifying complex credit union is required to maintain a higher net worth ratio than is otherwise required for the well-capitalized classification. This is a similar trade-off to the one qualifying community banking organizations can make under the CBLR.

Most commenters generally supported the CCULR framework. Several commenters noted that credit unions could choose to comply with the current risk-based capital rule or the CCULR. One commenter stated that, with the CCULR framework, the Board can maximize synergy with the risk-based capital rule, maintain flexibility, and achieve greater consistency with sound public policy and the FCUA. In contrast, another commenter opposed the optionality in the CCULR framework and stated that allowing credit unions to opt-in to the CCULR framework creates two populations of credit unions based on nothing but the compliance of internal actors of the credit unions. The Board believes that implementing a CCULR framework furthers the goal of the FCUA's PCA requirements by ensuring complex credit unions continue to hold sufficient capital, while minimizing the burden associated with complying with the NCUA's risk-based capital requirement. In response to comments, however, the final rule makes several material changes to the CCULR framework. These changes include: (1) Calibrating the CCULR at nine percent instead of 10 and forgoing any transition period; (2) removing the written notification requirement for exiting the CCULR framework after opting in; (3) permitting a grace period for credit unions that no longer meet the qualifying criteria due to a supervisory merger; and (4) amending the treatment of goodwill in both the CCULR framework and risk-based capital framework. The Board has not amended the effective date in response to the comments; the final rule, along with the 2015 Final Rule, is effective on January 1, 2022. Several commenters stated that this date should be delayed because the effective date of risk-based capital is in less than three months after the comment period closed for the proposed rule. Other commenters discussed the need to comment on Call Report changes. Commenters also stated that the NCUA should factor in the effective date of CECL, which will have a significant impact on net worth and the current economic conditions related to COVID–19.

Commenters recommended different alternative effective dates for the CCULR framework. Several commenters

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[40] Case law research revealed no decisions discussing the meaning of ''risk-based'' under the FCUA or other statutes that impose risk-based capital requirements on financial institutions.

[41] By contrast, in 2010, Congress specifically elaborated on the risk-based measures applicable to banks by providing that the generally applicable risk-based capital requirements for those institutions must include risk-weighted assets in the denominator of the ratio. Public Law 111–203, codified at 12 U.S.C. 5371. Congress did not elect to amend the FCUA to add a similar elaboration on the risk-based net worth requirement applicable to complex credit unions, which is consistent with the Board's interpretation that the term risk-based by itself does not necessarily entail risk-weighted assets. This reading is consistent with judicial interpretations of the closely related phrase ''based on,'' which the Supreme Court has held to indicate a causal or but-for-causation relationship between the phrase ''based on'' and the term it modifies. *Babb* v. *Wilkie,* 140 S.Ct. 1168, 2020 WL 1668281, at *4 (Apr. 6. 2020). Similarly, a ''risk-based'' requirement can be understood as a requirement that bears a causal relationship to the relevant risks but does not require a specific form for the calculation of this requirement.

[42] Similarly, the Board initially explored a non-risk-adjusted approach in the advance notice of proposed rulemaking that the Board issued following CUMAA's enactment in 1998, in which it requested comments on addressing this provision through increased net worth requirements as well as through risk-adjusted measures. 63 FR 57938 (Oct. 29, 1998). This approach is also consistent with the Senate report accompanying CUMAA, which stated: ''The NCUA must design the risk-based net worth requirement to take into account any material risks against which the *6 percent net worth ratio* required for an insured credit union to be adequately capitalized may not provide adequate protection. Thus, the NCUA should, for example, consider whether the six percent requirement provides adequate protection against interest-rate risk and other market risks, credit risk, and the risks posed by contingent liabilities, as well as other relevant risks. The design of the risk-based net worth requirement should reflect a reasoned judgment about the actual risks involved.'' S. Rep. No. 105–193 at 14 (May 21, 1998) (emphasis added). The report indicates that Congress did not intend to prescribe how the Board accounts for any relevant risks that the six percent net worth ratio does not adequately address.

[43] 86 FR 45825 (Aug. 16, 2021).

recommended January 1, 2023. Other commenters recommended six months after publication of the final rule in the **Federal Register**.

In contrast, one banking trade organization recommended that the Board first subject credit unions to the risk-based capital standards before implementing an opt-in to the CCULR framework. This argument appeared to be based primarily or solely on the fact that banks complied with risk-based capital before Congress enacted and the other banking agencies implemented the CBLR. The Board found no new evidence or information that would warrant it refraining from adopting the CCULR framework now. As discussed in the proposed rule and this final rule preamble, a complex credit union which opts into the CCULR framework will generally increase the overall capital requirement. The Board continues to find that implementing the CCULR framework alongside the 2015 Final Rule will balance flexibility and choice for complex credit unions with safety and soundness and overall capital adequacy.

The Board is not delaying the implementation of either the CCULR framework or the 2015 Final Rule. The Board did not propose to delay the 2015 Final Rule and does not believe that credit unions need additional time to comply with either framework.[44] The Board acknowledges that January 1, 2022, is less than the standard effective date of 30 days following the publication of this final rule. There are, however, several factors that persuade the Board that credit unions will not be disadvantaged. First, credit unions are not required to comply with the CCULR framework as it is an optional framework to the 2015 Final Rule. Also, credit unions do not have to select their framework until the end of the first quarter in 2022, which is a few months after the publication of the final rule in the **Federal Register**. The final rule does not include any new calculations for complex credit unions and relies on the net worth ratio, an existing capital measure that credit unions report each quarter. Finally, the Board is not persuaded that credit unions are unprepared to choose between the CCULR framework and the risk-based capital framework due to Call Report amendments. The proposed rule included sample Call Report illustrations. While the Board did not seek specific comments in the proposed rule on the Call Report changes, credit unions knew of the potential changes and no comments were received expressing general confusion. The agency also published a Notice and Request for Comment on the proposed Call Report changes on September 27, 2021.[45] Thus, the Board believes a January 1, 2022 effective date for the CCULR framework is reasonable and not disadvantageous to credit unions.

B. Qualifying Complex Credit Unions

Under the final rule, a qualifying complex credit union is defined as a complex credit union under 12 CFR 702.103 that meets the following criteria (qualifying criteria), each as described further as follows:

(1) Has a CCULR (net worth ratio) of 9 percent or greater;[46]

(2) Has total off-balance sheet exposures of 25 percent or less of its total assets;

(3) Has the sum of total trading assets and total trading liabilities of 5 percent or less of its total assets; and

(4) Has the sum of total goodwill and total other intangible assets of 2 percent or less of its total assets.

The Board believes complex credit unions that do not meet any one of the qualifying criteria should remain subject to risk-based capital to ensure that such credit unions hold capital commensurate with the risk profile of their activities. The Board will continue to evaluate the qualifying criteria over time to ensure it continues to be appropriate.

1. CCULR of Nine Percent or Greater

The final rule requires a complex credit union to have a CCULR of at least nine percent to be classified as a qualifying complex credit union. Given this change from 10 percent in the proposal, the Board is not adopting the proposed transition provision, which would have set the CCULR at 9 percent initially, then increased it to 10 percent by January 1, 2024. For a discussion of the relevant comments, see *Section D. Calibration*.

2. Off-Balance Sheet Exposures

The Board did not receive substantial comment on the proposed off-balance sheet exposure criterion. One commenter requested further guidance on this criterion. Another credit union said this criterion is better addressed through the examination process. The proposed rule provided substantial detail on the eight off-balance sheet exposures. The Board also disagrees that this criterion is better addressed through the supervisory process; rather, the Board believes the off-balance sheet criterion is essential in determining the appropriateness of the CCULR framework for a specific credit union. If a complex credit union has substantial off-balance sheet exposures, the Board believes the more precise risk-based capital framework is necessary to determine its capital adequacy.

Under the final rule, a qualifying complex credit union is required to have total off-balance sheet exposures of 25 percent or less of its total assets, as of the end of the most recent calendar quarter. The Board is including these qualifying criteria in the CCULR framework because the CCULR includes only on-balance sheet assets in its denominator. Thus, it does not require a qualifying complex credit union to hold capital against its off-balance sheet exposures. This qualifying criterion is intended to reduce the likelihood that a qualifying complex credit union with significant off-balance sheet exposures would be required to hold less capital under the CCULR framework than under the risk-based capital ratio.[47]

The other banking agencies' CBLR framework also excludes banking organizations with significant off-balance sheet exposures. The other banking agencies' definition of off-balance sheet exposures, however, has several differences from the current definition of off-balance sheet exposures in the 2015 Final Rule. Thus, to make the CCULR framework more comparable to the CBLR and to improve on the effectiveness of the 2015 Final Rule, the final rule amends the NCUA's definition of off-balance sheet exposures. The amendments to the definition of off-balance sheet exposure apply to both the CCULR framework and the risk-based capital framework.[48]

Under the CCULR framework, off-balance sheet exposures mean:

(1) For unfunded commitments, excluding unconditionally cancellable commitments, the remaining unfunded portion of the contractual agreement.

(2) For loans transferred with limited recourse, or other seller-provided credit enhancements, and that qualify for true sale accounting, the maximum contractual amount the credit union is exposed to according to the agreement, net of any related valuation allowance.

(3) For loans transferred under the Federal Home Loan Bank (FHLB) mortgage

[44] Because the Board did not propose any change to the 2015 Final Rule's effective date, a change in this final rule would not be within the scope of the proposed rule.

[45] 86 FR 53351 (Sept. 27, 2021).

[46] For an additional discussion on why the Board set the ratio to nine percent, see *Section D. Calibration of the CCULR.*

[47] The amendments to § 702.104, Risk-Based Capital Ratio, include credit conversion factors and risk-weights for off-balance sheet exposures.

[48] The final rule also includes risk weights for each new exposure in the definition of off-balance sheet exposure. See, *Section L. Amendments to the 2015 Final Rule.*

partnership finance program, the outstanding loan balance as of the reporting date, net of any related valuation allowance.

(4) For financial standby letters of credit, the total potential exposure of the credit union under the contractual agreement.

(5) For forward agreements that are not derivative contracts, the future contractual obligation amount.

(6) For sold credit protection through guarantees and credit derivatives, the total potential exposure of the credit union under the contractual agreement.

(7) For off-balance sheet securitization exposures, the notional amount of the off-balance sheet credit exposure (including any credit enhancements, representations, or warranties that obligate a credit union to protect another party from losses arising from the credit risk of the underlying exposures) that arises from a securitization.

(8) For securities borrowing or lending transactions, the amount of all securities borrowed or lent against collateral or on an uncollateralized basis.

Each element of the off-balance sheet definition is discussed in detail in the proposed rule.

3. Trading Assets and Liabilities

Commenters raised no objections to the proposed criterion related to trading assets and labilities. Thus, the Board is finalizing this provision as proposed. Under the final rule, a qualifying complex credit union is required to have the sum of its total trading assets and total trading liabilities be five percent or less of its total assets, each measured as of the end of the most recent calendar quarter. This criterion, including related definitions, is discussed in detail in the proposed rule.

4. Goodwill and Other Intangible Assets

Under the proposal, a qualifying complex credit union was required to have the sum of total goodwill and other intangible assets of two percent or less of its total assets. As proposed, qualifying complex credit unions were required to include excluded goodwill and excluded other intangible assets in this calculation.[49] Five commenters objected to the inclusion of a criterion related to goodwill and intangible assets. One commenter stated that previous accounting changes resulted in increased amounts of goodwill related to supervisory mergers. This commenter stated that credit unions that support the NCUA and the NCUSIF by assisting in supervisory mergers should not be penalized by subsequent restrictions on the holding of supervisory goodwill.[50] Several commenters requested that supervisory goodwill and elective goodwill should be treated differently. Another commenter stated that only impaired goodwill should be deducted. Another commenter preferred that the goodwill criterion be removed but stated that, at the very least, the Board should not include excluded goodwill and excluded other intangible assets. Finally, one commenter stated that goodwill is not an eligibility criterion for the CBLR. The Board notes that goodwill is deducted from insured banks' numerator for purposes of the CBLR. Other commenters generally supported the inclusion of goodwill as a criterion.

In response to the comments received, the Board has revised the treatment of goodwill in the final rule. The final rule will not include excluded goodwill and excluded other intangible assets as part of the calculation for the two percent eligibility requirement. As a result of these changes, a complex credit union need not include excluded goodwill or excluded other intangible assets for purposes of calculating the two percent goodwill qualifying criterion under the CCULR framework. Related to this change, the 2015 Final Rule has been amended to permanently grandfather excluded goodwill and excluded other intangible assets. Thus, under the 2015 Final Rule, a complex credit union will not deduct excluded goodwill or excluded other intangible assets from its risk-based capital numerator after the sunset date of January 1, 2029. For additional information on this change, see *Section L. Amendments to the 2015 Final Rule.*

The Board made these changes in response to commenters' concerns about equity related to subsequent changes to the treatment of supervisory goodwill. Certain commenters expressed concern about unforeseen capital implications related to goodwill acquired as part of a supervisory merger or combination before December 28, 2015. In this case, the Board agrees that credit unions that assisted in previous supervisory mergers and combinations should not be unduly penalized by subsequent restrictions on excluded goodwill. Thus, the Board will not require credit unions to include such exposures when calculating the two percent threshold under the CCULR framework.

The Board, however, still believes a qualifying criterion related to goodwill and other intangible assets should be included in the final rule. The Board also recognizes that other intangible assets contain a high level of uncertainty regarding a credit union's ability to realize value from these assets, especially under adverse financial conditions. Due to the uncertainty of recognizing value from goodwill and other intangible assets, the other banking agencies require insured banks to deduct goodwill and intangible assets from tier one capital.[51] The Board believes it is prudent to assess the credit union's balance of goodwill and other intangible assets to ensure comparability with the banking industry. Without this criterion, a qualifying credit union could violate the principles of the CBLR framework by using the CCULR despite substantial goodwill and intangible assets. The Board also notes that, under the 2015 Final Rule, goodwill and other intangible assets are deducted from both the risk-based capital ratio numerator and denominator.

The Board believes that complex credit unions with two percent or less of their assets in goodwill and other intangibles assets would not hold less capital under the CCULR framework than under the risk-based capital ratio. In addition, as of June 30, 2021, it is estimated that the two percent threshold would not exclude any complex credit unions from the CCULR framework. Thus, the Board believes a two percent threshold balances regulatory relief for most qualifying complex credit unions with recognizing the uncertainty and volatility of goodwill and other intangible assets. The Board believes that complex credit unions with substantial goodwill and other intangible assets should calculate their capital adequacy using the risk-based capital ratio, as their portfolios may require higher capital levels.

5. Other CBLR Eligibility Criteria

Total Assets of Less Than $10 Billion

Under the other banking agencies' CBLR framework, only depository institutions or depository institution holding companies with total consolidated assets of less than $10 billion are eligible to use the CBLR.

The Board did not include this qualifying criterion in the proposed rule. Several commenters supported this position. Commenters reiterated the

[49] Excluded goodwill means the outstanding balance, maintained in accordance with GAAP, of any goodwill originating from a supervisory merger or combination that was completed on or before December 28, 2015. Excluded other intangible assets means the outstanding balance, maintained in accordance with GAAP, of any other intangible assets such as core deposit intangible, member relationship intangible, or trade name intangible originating from a supervisory merger or combination that was completed on or before December 28, 2015.12 CFR 702.2 (effective Jan. 1, 2022).

[50] Supervisory goodwill is goodwill originating from a supervisory merger or combination, as defined in the 2015 Final Rule.

[51] *See e.g.,* 12 CFR 324.22.

Board's justification in the proposed rule. For example, commenters noted that credit unions' stringent portfolio-shaping rules mitigate many of the risks associated with larger institutions in the banking sector. Also, credit unions with $10 billion or more in assets are generally required to conduct capital planning, and credit unions with $15 billion or more in assets are generally required to conduct stress testing.[52]

One commenter objected to the inclusion of all qualifying credit unions by noting that Congress limited the asset size threshold for a qualifying community bank to less than $10 billion in assets. The commenter presented no new information or considerations beyond those the Board addressed in the proposed rule. The Board disagrees and, for the reasons discussed in the proposed rule preamble, continues to believe the CCULR is an appropriate capital framework for all complex credit unions as the FCUA limits the types of assets an FCU can hold compared to banking organizations. The Board also finds that the legislative cap on eligibility for the CBLR does not require the Board to impose the same cap on the CCULR framework, which is tailored to the requirements of the FCUA and the risks associated with complex credit unions. Thus, the Board is finalizing this provision as proposed.

Other Qualifying Criteria

In the proposed rule, the Board asked whether the final rule should include other qualifying criteria. Several commenters stated they did not support expanding the qualifying criteria to include certain categories discussed in the proposed rule, including ''heightened risk'' asset categories, investments in CUSOs, or concentrations of mortgage servicing assets (MSAs). Several commenters stated that the other banking agencies do not have similar qualifying criteria.

One banking trade organization stated that the CCULR framework should only be made available to those credit unions that do not originate or hold a significant amount of member business loans.

The Board is not adding any additional qualifying criteria with a CCULR of nine percent. The Board believes that a CCULR of nine percent is appropriate because most complex credit unions would be required to hold more capital under the CCULR framework than under the risk-based capital framework. This would be true even if a complex credit union's portfolio included greater than average amount of assets with higher risk weights under the 2015 Final Rule, such as concentrations in junior-lien mortgages and commercial loans, investments in CUSOs, or concentrations of MSAs. The Board considered adding qualifying criteria to account for adopting the CCULR at 9 percent instead of 10 percent but does not believe it is necessary now as credit unions do not hold less capital under the CCULR framework than the risk-based capital framework.

The Board may consider future qualifying criteria as it gains experience in supervising complex credit unions under the CCULR framework or if the risk-profile of credit union assets change. For example, if the credit union industry begins to hold larger concentrations of high-risk assets, including junior lien mortgages, commercial loans, MSAs, corporate credit unions investments, or CUSO investments, then the Board may reconsider whether additional qualifying criteria are necessary. If an individual credit union holds significant concentrations of these assets, then the Board may exercise its reservation of authority to require the credit union to calculate its capital adequacy under the risk-based capital framework.[53]

C. The CCULR Ratio

Under the proposal, the CCULR would be the net worth ratio, which is defined under the 2015 Final Rule as the ratio of the credit union's net worth to its total assets rounded to two decimal places (for example 9.32 percent).[54]

The Board proposed to use the net worth ratio for the CCULR for its simplicity. Complex credit unions are required to calculate their net worth ratio regardless of whether they opt into the CCULR framework. Thus, complex credit unions are not required to calculate a unique ratio for purposes of opting into the CCULR framework. Also, complex credit unions are already familiar with the net worth ratio, which reduces compliance costs compared to a unique ratio designed for the CCULR framework.

Several commenters supported using the net worth ratio for the CCULR for the reasons stated in the proposed rule. But three commenters recommended that the Board create a new measure of capital for the CCULR framework. Specifically, commenters recommended the inclusion of subordinated debt for credit unions that are not low-income designated credit unions. Alternatively, commenters also recommended the inclusion of other types of capital shares akin to the perpetual contributed capital shares issued by corporate credit unions. An association of credit union supervisors stated that subordinated debt should be included because during times of economic dislocation, even healthy institutions may not be able to accelerate their capital replenishment. This commenter further stated that allowing for additional sources of capital such as subordinated debt strengthens the credit union system and protects the NCUSIF. One commenter stated that goodwill should be deducted from net worth for purposes of CCULR.

The Board considered an alternative measure of capital in the proposed rule that included subordinated debt parallel to the risk-based capital ratio numerator from the 2015 Final Rule.[55] The Board has not adopted a new measure of capital in the final rule. First, the Board believes that the numerator to the 2015 Final Rule is a more conservative measure of capital compared to the numerator in the net worth ratio. Second, as the proposed rule preamble stated, a new measure of capital would likely include several deductions, including deductions for the NCUSIF capitalization deposit, goodwill, other intangible assets, and identified losses and would be more complicated to calculate than the net worth ratio.

Regarding commenters' characterization of subordinated debt as a useful tool to build capital when a credit union is experiencing a capital hardship, the Board acknowledges the benefits of issuing subordinated debt, but also notes that subordinated debt can be an expensive form of capital, both in the terms of the cost of issuing it and in terms of necessary rate of return to investors. Also, it may not be readily available during times of stress.

D. Calibration of the CCULR

The proposed rule would have allowed a qualifying complex credit union to opt into the CCULR framework if it met the minimum CCULR at the time of opting into the CCULR framework. The proposed rule initially set the CCULR at 9 percent and transitioned to 10 percent over two years. Almost all commenters objected to calibrating the CCULR ratio at 10 percent, and instead recommended a 9 percent measure in conformance with the ratio used for the CBLR. Other commenters were concerned that fewer credit unions could take advantage of the CCULR framework if it is set at 10

[52] 12 CFR part 702, subpart E.

[53] See, *Section J. Reservation of Authority.*

[54] 12 CFR 702.2 (effective Jan. 1, 2022).

[55] 12 CFR 702.104(b) (effective Jan. 1, 2022).

percent. Some commenters stated that a nine percent CCULR would provide greater regulatory relief. Several commenters generally discussed that higher capital may restrict credit union growth and mean less resources to invest in products and services that benefit the member-owners. One commenter stated that a 10 percent calibration could restrict credit unions' ability to expand access to the underserved and underbanked. One commenter discussed that accelerated asset growth as a result of COVID–19 should favor a lower CCULR. Another commenter recommended that the Board set CCULR at less than nine percent and recommended a ratio closer to eight percent.

In contrast, one credit union commenter supported a CCULR of 10 percent. One banking trade organization generally supported sufficient capital requirements.

The Board understands the commenters' concerns about a 10 percent CCULR, due in part to the recent downward pressure on credit union net worth ratios from the rapid growth in assets during 2020 and 2021. The Board also understands that a higher capital requirement may restrict credit union ability to invest in member products and services. As the proposed rule explained, the Board initially considered setting the CCULR between 9 and 11 percent and presented analysis on the potential impact in terms of safety and soundness and burden reduction for potential CCULRs at 9 and 10 percent.

In recognition of this fact, and in response to the comments received, the Board has adopted a CCULR of nine percent and is forgoing the transition provision. The Board finds that this calibration of the CCULR will provide appropriate regulatory burden relief and serve as further incentive for complex credit unions to opt into the CCULR with the benefit of maintaining strong capital levels in the credit union system and ensuring safety and soundness.

Guided by the goals stated in the proposed rule's calibration discussion—maintaining strong capital levels in the credit union system, ensuring safety and soundness, and providing appropriate regulatory relief to as many credit unions as possible—the Board considered several factors in adopting a CCULR of nine percent.

First, the Board considered aggregate levels of capital among complex credit unions. The CCULR framework does not result in a reduction of the minimum required amount of capital held by complex credit unions and results in an overall increase in the minimum amount of required capital held by complex credit unions. Based on reported data as of June 30, 2021, approximately 70 percent of complex credit unions qualify to use the CCULR framework and would be well capitalized under a 9 percent calibration. This was a significant decrease in the number of eligible credit unions at 9 percent when compared to pre-pandemic net worth ratios, when approximately 90 percent would have been eligible. Of the total 680 complex credit unions as of June 30, 2021, 473 have a net worth ratio greater than nine percent and would be well capitalized under a nine percent CCULR standard. Of those 473 credit unions, the Board estimates that all of them meet the qualifying criteria, and are thus eligible to opt into the CCULR framework. Under the CCULR, if all 473 credit unions opted into the CCULR and held the minimum nine percent net worth ratio required to be well capitalized, the total minimum net worth required is estimated at $111.8 billion, an increased capital requirement of $24.3 billion over the minimum required under the 2015 Final Rule. The Board is not aware of any qualifying complex credit unions that would reduce their capital requirement with a CCULR of nine percent as compared to the 2015 Final Rule.

The Board also considered the extent of the burden relief provided by the CCULR framework. The Board believes a CCULR of 9 percent is preferable to a CCULR of 10 percent as it permits an additional 173 complex credit unions (473 eligible at 9 percent versus 300 at 10 percent) to opt-into the CCULR framework, which supports the Board's goal of reducing regulatory burden for as many complex credit unions as possible.

Next, the Board considered that the 8 to 10 percent range established by Congress for the CBLR is 300 to 500 basis points higher than the 5 percent leverage ratio required for well-capitalized status under the other banking agencies' PCA framework.[56] As detailed in the proposed rule preamble, the Board reviewed the basis for the 7 percent net worth ratio for insured credit unions and considered a range between 9 and 11 percent for the CCULR. The Board's analysis established that setting the CCULR 300 basis points higher than the seven percent net worth ratio while the other banking agencies have set the CBLR 400 basis points higher than the comparable leverage requirements for insured banks would be appropriate because of changes in credit union investments in corporate credit unions since Congress established the seven percent net worth ratio in 1998. But the proposed rule did not conclude that a 9 percent CCULR would be inappropriate and specifically analyzed the merits of 9 and 10 percent in the calibration discussion.

Upon reconsideration, the Board is adopting a nine percent CCULR based on its effect on capital levels and burden reduction, rather than calibrating CCULR based on the analysis of the seven percent net worth ratio and relative difference between the CBLR and the leverage ratio for insured banks. The Board acknowledges, however, that setting CCULR at nine percent is only 200 basis points above the statutory well-capitalized threshold for the net worth ratio absent consideration of the reduced corporate credit union investments. The Board also recognizes it is less than the 400 basis point differential established by the other banking agencies in setting the CBLR when compared to the leverage ratio. The Board, however, believes a CCULR of nine percent is prudent and does not present undue safety and soundness risk. A primary reason that other banking agencies chose a CBLR of nine percent was to ensure qualifying community banks generally maintain their current level of capital. As discussed previously, a CCULR of nine percent increases the total minimum net worth required to $111.8 billion, an increased capital requirement of $24.3 billion over the minimum required under the 2015 Final Rule. The Board also notes that the analysis in the proposed rule comparing bank and credit union net worth and leverage ratios was not a decisive factor but one of several factors forming the overall proposal, which included a nine percent CCULR in the range of consideration.

Also, as a separate point that confirms the Board's approach and conclusion, the other banking agencies also designed the CBLR framework to reduce the likelihood that a banking organization would not hold less capital under the CBLR framework than under the risk-based capital framework. The Board estimates that no qualifying complex credit union would reduce its capital requirement with a CCULR of nine percent as compared to the 2015 Final Rule. Thus, the Board does not believe a reduced CCULR of nine percent will result in the potential for regulatory arbitrage between the two frameworks.

Finally, as noted in the proposed rule preamble, the Board specifically considered comparability to the other

[56] 12 CFR 6.4 (OCC), 12 CFR 208.43 (Federal Reserve Board), and 12 CFR 324.403 (FDIC).

banking agencies' CBLR framework when designing the CCULR framework. The other banking agencies established a CBLR of nine percent—that is, if an insured bank has a CBLR of nine percent and meets other requirements, it is considered well capitalized. Adopting the CCULR at nine percent will make the two frameworks generally consistent in the actual level of capital required.

In sum, the Board believes a CCULR of nine percent is prudent and does not present undue safety and soundness risk. This calibration is also within the range of consideration from the proposed rule and meets the goal of reducing regulatory burden when appropriate. Also, a CCULR of nine percent is comparable to the calibration of the CBLR. Thus, based on a reconsideration of the perspective on the calibration level relative to the CBLR and credit union net worth requirements, and a further analysis of net worth levels at 9 and 10 percent net worth ratios, the Board finds that adopting a 9 percent CCULR provides adequate protection for the NCUSIF. The Board intends to continue to monitor the impact of CCULR and RBC on credit unions and the NCUSIF going forward.

E. Opting Into the CCULR Framework

Most commenters supported a credit union's ability to opt into CCULR at the end of each calendar quarter. A few credit unions also requested that they be permitted to freely switch between the risk-based capital framework and CCULR framework and the NCUA not to limit how frequently a credit union opts into the CCULR framework. The Board has made no changes to the opt-in procedures. Under the final rule, a qualifying complex credit union with a CCULR of nine percent or greater may opt into the CCULR framework at the end of each calendar quarter. A qualifying complex credit union choosing to opt into the CCULR would indicate its decision by completing a CCULR reporting schedule in its Call Report.

F. Voluntarily Opting Out of the CCULR Framework

Under the proposal, after a qualifying complex credit union opted into the CCULR framework, it may voluntarily opt out of the framework by providing written notice to the appropriate Regional Director or the Director of the Office of National Examinations and Supervision.

Most commenters on the opt-out procedures stated that prior notice to NCUA should not be required and qualifying credit unions should be able to perform the required analysis and switch between the two options with the same ease as banking organizations. One commenter stated it is reasonable to expect that any complex credit union would not choose to opt-out of the CCULR framework without first performing a preliminary risk-based ratio calculation. The commenter wrote that if there is any possibility a credit union would skip performing such calculation, that possibility is not a justification for subjecting all complex credit unions to a notification requirement. Another commenter stated if the Board is concerned that qualifying complex credit unions are not prepared to implement risk-based capital, an alternative may be for the agency to only require advance notice in the first year of CCULR's implementation.

The Board has removed the written notice requirement for opting out of the CCULR framework. Under the other banking agencies' CBLR framework, qualifying banks that have opted into the CBLR may opt out of the framework at any time. The Board agrees with commenters and has aligned the final rule with the CBLR. The Board has reconsidered its position for several reasons. First, the Board believes that switching between CCULR and risk-based capital would be an infrequent activity and, potentially, of little benefit to the credit union. For any credit union that raises potential concerns, the NCUA can review its capital adequacy, including its choice of capital framework, through the normal supervisory process. And, the notice requirement in the proposed rule only provided the NCUA 61 days prior notice as compared to the timeframe notice would be provided through the Call Report under the final rule. The Board does not believe this 61-day period justifies subjecting all credit unions to the proposed notification. There is also no general requirement for credit unions to submit a Call Report schedule with risk-based capital before the first reporting period of March 2022, or whenever a credit union becomes complex and must calculate risk-based capital. The Board believes if it can manage the transition of newly complex credit unions to the risk-based capital framework without notification, notification is unnecessary for credit unions switching from the CCULR framework.

The Board also notes that, although a credit union may choose to use the CCULR framework, a credit union that frequently switched between CCULR and risk-based capital may raise supervisory concerns.

G. Compliance With the Criteria To Be a Qualifying Complex Credit Union

Under the proposed CCULR framework, complex credit unions have a two-calendar quarter grace period if they no longer meet one of the qualifying criteria to either begin calculating a risk-based capital ratio or to meet all the CCULR eligibility criteria. Commenters who discussed the grace period generally supported it and did not support creating a separate prompt corrective action framework for CCULR. One commenter objected to the required notice if the credit union is not likely to remain eligible for the CCULR framework. One commenter suggested a three-year grace period for a credit union that fails to comply with an eligibility requirement due to a merger, rather than immediately subjecting the credit union to the risk-based capital requirements. As discussed in the following paragraphs, the Board has made two changes to the proposed grace period in response to commenters.

Under the final rule, after a qualifying complex credit union has adopted the CCULR framework and then no longer meets the qualifying criteria, it is required, within a limited grace period of two calendar quarters, either to once again meet the qualifying criteria or comply with the risk-based capital ratio requirements. The grace period begins at the end of the calendar quarter in which the credit union ceases to satisfy the criteria to be a qualifying complex credit union and ends after two consecutive calendar quarters. For example, if the complex credit union ceases to satisfy one of the qualifying criteria after December 31st (and still does not meet the criteria as of the end of that quarter), the grace period for this credit union would begin at the quarter ending March 31st and would end at the quarter ending September 30th. The complex credit union could continue to use the CCULR framework as of June 30th but would need to fully comply with the risk-based capital ratio and the associated reporting requirements as of September 30th, unless at that time the qualifying complex credit once again met the qualifying criteria of the CCULR framework. The Board believes this limited grace period is appropriate to mitigate potential volatility in capital and associated regulatory reporting requirements based on temporary changes in a credit union's risk profile from quarter to quarter, while capturing more permanent changes in the risk profile.

During the grace period, the credit union continues to be treated as a qualifying complex credit union and must continue calculating and reporting its CCULR, unless it has opted out of using the CCULR framework. Also, the qualifying complex credit union continues to be considered to have met the capital ratio requirements for the well-capitalized capital category during the grace period. If the qualifying complex credit union has a CCULR of less than seven percent, however, it is not considered to be well capitalized. Instead, its capital classification is determined by its net worth ratio. For additional discussion on the treatment of a qualifying complex credit union when its CCULR falls below nine percent, see Section H—*Treatment of a Qualifying Complex Credit Union That Falls Below the CCULR Requirement.*

The two-quarter grace period is akin to the other banking agencies' CBLR framework. The proposed rule differed from the CBLR framework because a qualifying complex credit union that may fail to meet the requirements to be a qualifying complex credit union by the end of the grace period was required to submit written notification to the appropriate Regional Director or the Director of Office of National Examinations and Supervision. Consistent with the reasons discussed for credit unions voluntarily opting out of the CCULR framework, the Board has decided to remove the notification requirements in the final rule. The Board no longer believes notification is necessary and will monitor compliance and a credit union's adoption of risk-based capital through the supervisory process.

Under the CBLR Final Rule, a qualifying community banking organization that ceases to meet the qualifying criteria as a result of a business combination is not provided a grace period. The proposed rule included a similar limitation. One commenter suggested a three-year grace period for a credit union that fails to comply with an eligibility requirement due to a merger, rather than immediately subjecting the credit union to the risk-based capital requirements. In general, the Board believes credit unions that no longer meet the CCULR eligibility requirements due to a merger do not need a grace period, as complex credit unions should consider the regulatory capital implications of a planned business combination and be prepared to comply with the applicable requirements.

The Board, however, believes that supervisory mergers should be an exception to this general policy. As defined in the 2015 Final Rule, a supervisory merger or combination is a transaction that involved the following:

(1) An assisted merger or purchase and assumption where funds from the NCUSIF were provided to the continuing credit union;

(2) A merger or purchase and assumption classified by the NCUA as an ''emergency merger'' where the acquired credit union is either insolvent or ''in danger of insolvency'' as defined under appendix B to part 701; or

(3) A merger or purchase and assumption that included the NCUA's or the appropriate state official's identification and selection of the continuing credit union.[57]

The Board believes it is reasonable to provide a limited grace period for this select group of mergers because continuing credit unions in supervisory mergers may not have the benefit of time to plan for the capital implications of a merger. As a result, continuing credit unions may need additional time to meet the CCULR eligibility criteria following a supervisory merger. The Board believes a limited, two-quarter grace period is reasonable.

H. Treatment of a Qualifying Complex Credit Union That Falls Below the CCULR Requirement

A qualifying complex credit union that has opted into the CCULR framework and has a CCULR of nine percent or greater is considered well capitalized. A qualifying complex credit union's CCULR may deteriorate due to a decline in its level of retained earnings, growth in its total assets, or a combination of both. In this case, a credit union may choose to stop using the CCULR framework and instead become subject to the risk-based capital requirement. The Board recognizes, however, that some qualifying complex credit unions may find it unduly burdensome to begin complying with the more complex risk-based capital requirements while the credit union is experiencing a decline in its CCULR.

Under the proposed rule, a minimum CCULR is one of the qualifying criteria. Thus, if a qualifying complex credit union has a CCULR that falls below the minimum requirement, it would receive the same grace period of two calendar quarters, as applicable when a credit union ceases to meet the other qualifying criteria. The Board received no comments on this provision and is finalizing it as proposed.

Thus, under the final rule a credit union is permitted a two-quarter grace period when its CCULR falls below the minimum requirement. After the two-quarter grace period, the qualifying complex credit union must either once again meet the minimum CCULR ratio or comply with the risk-based capital requirements. During the grace period, the credit union is deemed to have met the well-capitalized capital ratio requirements for PCA purposes, provided its net worth ratio remains at seven percent or greater.

If a credit union's net worth ratio falls below seven percent, it is not considered to have met the capital ratio requirements for the well-capitalized capital category and its capital classification is determined by its net worth ratio.

I. Transition Provision

The Board proposed a two-year transition provision to delay the introduction of a 10 percent CCULR. All commenters who discussed the transition period favored a longer transition, and most recommended four years. Commenters generally discussed uncertainty due to COVID–19, upcoming CECL implementation, and the need for additional time to build capital. A few commenters who recommended a nine percent CCULR also recommended setting CCULR at eight percent during the transition period. One commenter recommended the agency commit to future retargeting of a fully phased in CCULR once additional data is collected during the transition period.

Because the Board is finalizing the CCULR at 9 percent instead of 10, it is not adopting the transition provision. As proposed, the transition provision would have applied if the permanent CCULR were 10 percent. Thus, the change in the CCULR in the final rule makes the transition provision unnecessary and of no effect.

The Board is not adopting a transition provision with an initial CCULR of eight percent, as several commenters suggested, for two reasons. First, the Board does not believe there is sufficient logical outgrowth from the proposal to adopt a CCULR of eight percent. Separately from the transition provision, the proposed rule posed a question on calibrating the CCULR at eight percent but did not otherwise discuss it or provide a basis to support this level of capital being sufficient to protect the NCUSIF. Second, the Board does not believe a CCULR of eight percent is necessary to ensure most complex credit unions are eligible to opt into the CCULR framework. As previously mentioned, an estimated 70 percent of complex credit unions will be eligible to opt into the CCULR framework on January 1, 2022.

J. Reservation of Authority

The proposed rule included a reservation of authority for the Board to require a credit union to use the risk-

[57] 12 CFR 702.2 (effective Jan. 1, 2022).

based capital framework in specific cases. As detailed in this section, the final rule adopts this provision as proposed. Most commenters who discussed the reservation of authority did not object to it. A few noted it was analogous to the reservation of authority for the other banking agencies under the CBLR. Several commenters recommended the Board provide greater detail on how this process will work, who at NCUA makes the decision, and what information would be provided to the credit union. Three commenters also requested an appeal process. Two commenters objected to the reservation of authority. One commenter characterized the provision as providing NCUA with ''subjective judgment'' to establish minimum capital levels which should be left out of any minimum capital threshold. The final rule adopts the reservation of authority as proposed. Additional information is discussed in the following paragraphs in response to commenters.

In general, a complex credit union that meets the eligibility criteria may opt into the CCULR framework. There may be limited instances, however, whereby the CCULR framework would be inappropriate and not require sufficient capital to adequately protect the NCUSIF. To address such situations, the final rule includes a reservation of authority that can be exercised by the Board. Under the reservation of authority, the Board can require a complex credit union that has opted into the CCULR framework to use the risk-based capital framework to calculate its capital adequacy if the Board determines that the complex credit union's capital requirements are not commensurate with its credit or other risks. When deciding, the Board would consider all relevant factors affecting the complex credit union's safety and soundness. Also, the Board expects to provide a credit union potentially subject to use of the reservation of authority with an opportunity to present evidence on why the CCULR framework is appropriate for that institution.

The Board expects to apply the reservation of authority only in limited circumstances. Under the reservation of authority, credit unions are entitled to a two-quarter grace period before being required to comply with the risk-based capital framework. No appeal process is being provided, however, because under this final rule, the Board would exercise the reservation of authority.

K. Effect of the CCULR on Other Regulations

1. Member Business Loan Cap

The Board did not receive any comments on the proposed member business loans (MBL) analysis and thus, affirms its conclusions and interpretations in the proposed rule. Section 107A of the FCUA generally limits the aggregate amount of MBLs that an insured credit union may make, subject to exceptions for some categories of loans, such as loans granted by a corporate credit union to another credit union.[58] In addition, the FCUA exempts certain credit unions from complying with the aggregate MBL limit. Specifically, an insured credit union chartered to make MBLs, or has a history of making MBLs to its members, as determined by the Board, is not subject to the aggregate MBL limit.[59] Also, an insured credit union that serves predominantly low-income members, as defined by the Board, or is a community development financial institution, as defined in 12 U.S.C. 4702, is also not subject to the aggregate MBL limit.[60]

An insured credit union that is subject to the aggregate MBL limit may not make an MBL that would result in the total amount of outstanding MBLs at the credit union being more than the lesser of 1.75 times the actual net worth of the credit union or 1.75 times the minimum net worth required for a credit union to be well capitalized under section 216(c)(1)(A) of the FCUA.[61] Section 107A defines net worth for purposes of that section, providing that it includes the retained earnings balance, as determined under GAAP. Under this section, for credit unions that serve predominantly low-income members, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims against the credit union, including the claims of creditors, shareholders, and the NCUSIF.[62]

For credit unions that are not complex and thus are not subject to a risk-based net worth requirement under section 216(d) of the FCUA, MBLs are limited to 1.75 times the net worth required for the credit union to meet the seven percent net worth ratio under section 216(c)(1)(A)(i), assuming the credit union's actual net worth is greater than the minimum required to be well capitalized. To determine its maximum allowable outstanding balance of MBLs, a credit union multiplies 1.75 by seven percent of its total assets.

Until 2016, the Board calculated the MBL limitation in the same manner for complex credit unions that are subject to a risk-based net worth requirement under section 216(d) without considering any greater amount of net worth that a complex credit union might need to hold to be well capitalized under a risk-based net worth requirement.[63] In the 2015 proposed rule on MBLs, the Board proposed to amend the MBL regulation to incorporate section 107A more faithfully and noted that complex credit unions could have a different limitation caused by the need to hold more net worth under the risk-based requirement.[64] The preamble to the 2016 Final Rule on MBLs and commercial loans analyzed this issue in response to comments on the rule and explained that under the 2015 Final Rule on risk-based capital, the MBL limitation would be calculated in the following manner. When actual net worth is greater than the minimum to be well capitalized, the limit on MBLs is 1.75 times the greater of the following calculations: (i) The minimum amount of capital (in dollars) required by the net worth ratio, which is 7 percent times total assets; and (ii) the minimum amount of capital (in dollars) required by the risk-based capital ratio, which is 10 percent times total risk-weighted assets. Then, the credit union must solve for the minimum amount of net worth needed after accounting for other forms of qualifying capital allowed under the 2015 Final Rule.[65]

Thus, a complex credit union subject to a risk-based capital requirement under the 2015 Final Rule would have to calculate the minimum amount of net worth required by both its net worth ratio and risk-based capital requirement. First, the net worth ratio requires a

[58] 12 U.S.C. 1757a(c)(1)(B).

[59] 12 U.S.C. 1757a(b)(1).

[60] 12 U.S.C. 1575a(b)(2).

[61] 12 U.S.C. 1757a(a).

[62] This definition does not expressly cover two elements that were added to the definition of net worth in section 216(o)(2) for PCA purposes in a 2011 enactment: (1) Amounts that were previously retained earnings of any other credit union with which the insured credit union has combined; and (2) assistance that the Board has provided under Section 208. Public Law 111–382, 124 Stat. 4135 (Jan. 4, 2011). In the 2016 MBL final rule, the Board included these elements in net worth for purposes of the MBL limitation by defining net worth in the MBL regulation through a cross-reference to the current part 702 definition of net worth, which includes all the elements in section 216(o)(2). The 2015 Final Rule amended the definition of net worth in part 702 effective January 1, 2022 but did not add or remove any of the components of net worth in the current regulation.

[63] Before amendments that the Board adopted in the 2016, the MBL regulation limited MBLs to 12.25 percent of an insured credit union's total assets—1.75 times the seven percent net worth ratio.

[64] 80 FR 37898, 37909 (July 1, 2015).

[65] 81 FR 13530, 13548 (Mar. 14, 2016).

complex credit union to hold net worth (in dollars) equal to seven percent of its total assets. Second, for purposes of computing the MBL cap,[66] the risk-based capital ratio requires a complex credit union to hold net worth (in dollars) equal to 10 percent of the credit union's risk-weighted assets as calculated under 12 CFR 702.104. The complex credit union would then compare the two net worth amounts as calculated in the preceding discussion. The credit union would take the larger of the two net worth amounts, which is the minimum amount of net worth necessary to be well capitalized under either the net worth ratio or the risk-based capital ratio and compare that to actual net worth. The lesser of these two net worth amounts is used to compute the complex credit union's MBL cap, which would be 1.75 times the lesser of these two net worth amounts. While the 2015 Final Rule is not yet effective, the agency currently implements this approach for the small number of complex credit unions that are required to hold more net worth under the current risk-based net worth requirement than the net worth ratio.

The Board continues to find this approach reflects the correct reading of sections 107A and 216 and re-affirms this interpretation over any prior interpretation that disregarded the risk-based net worth requirement for this purpose.[67] For complex credit unions, the amount to be well capitalized under section 216(c)(1)(A) is seven percent of total assets (the net worth ratio) or the amount required by the risk-based net worth requirement, which could be either the risk-based capital ratio under the 2015 Final Rule or the CCULR framework. A complex credit union must satisfy both of these requirements to be well capitalized under section 216(c)(1)(A), which means that, in section 107A's terms, the minimum net worth required to be well capitalized is the higher of the amount required by the net worth ratio or the risk-based net worth requirement. The Board finds this is a clear, plain language reading of both provisions. Section 107A(a) points to section 216(c)(1)(A) to determine the minimum net worth required for complex credit unions, and in turn, section 216(c)(1)(A) includes both the seven percent net worth ratio and the net worth required by any applicable risk-based net worth requirement. Reading section 107A(a) to exclude the net worth required for complex credit unions under section 216(c)(1)(A)(ii) would ignore a key component of the plain language of section 216(c)(1)(A) contrary to principles of statutory interpretation.

The Board also finds that even if sections 107A and 216(c)(1)(A) were considered ambiguous or unclear, it would interpret them in the same way. For instance, the Board observes two key textual indicators that Congress did not intend to limit this calculation to the seven percent net worth ratio. First, section 107A was enacted in the same legislation as section 216. Thus, Congress was aware that section 216(c)(1)(A) set a seven percent net worth ratio to be well capitalized. Yet in section 107A(a), Congress chose not to specify that the MBL limitation is determined by the amount of net worth required to achieve a seven percent net worth ratio. Instead, Congress provided more broadly that the limitation is determined by reference to the minimum net worth required under section 216(c)(1)(A). Second, Congress could have limited this calculation to the seven percent net worth ratio by providing the MBL limitation is determined by reference only to the minimum net worth required under section 216(c)(1)(A)(i), which would have excluded the risk-based net worth requirement. Instead, section 107A points to section 216(c)(1)(A), which encompasses both applicable net worth requirements for complex credit unions.

The Board acknowledges that the Senate Report associated with the legislation that enacted sections 107A and 216 refers to the MBL limitation as being based on the seven percent net worth ratio in a parenthetical statement. A statement by an individual Senator also refers to the limitation as being determined by the seven percent net worth ratio.[68] But this discussion in the Senate Report is brief and does not touch upon the risk-based net worth requirement or explain how the Senate believed the MBL limitation should work for complex credit unions, which are subject to additional net worth requirements. In any event, this general discussion does not expressly contradict the language and structure of sections 107A and 216, which the Board finds to be better indicators of the meaning and purpose of these provisions.

Applying this approach to the CCULR framework, qualifying complex credit unions opting into the CCULR framework would calculate a different limitation on MBLs from their current calculation under the seven percent net worth ratio. This is because, as discussed previously in the Legal Authority section, the CCULR is considered a risk-based net worth requirement, and thus falls under section 216(c)(1)(A)(ii) as a measure of the minimum net worth required to be well capitalized. Accordingly, under the final rule, a qualifying complex credit union that opts into the CCULR determines its MBL limitation by reference to the amount of net worth required to be well capitalized under the CCULR. Complex credit unions that do not qualify or do not opt into the CCULR framework determine their MBL limitation by reference to the 10 percent risk-based capital ratio, as described in the 2016 MBL final rule. In either scenario, if a complex credit union has actual net worth below those measures, its actual net worth would determine its MBL limitation.

2. Capital Adequacy

Under the 2015 Final Rule, a complex credit union must have a process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive written strategy for maintaining an appropriate level of capital.[69] While a qualifying complex credit union opting into the CCULR framework is required to have a comprehensive written strategy for maintaining an appropriate level of capital, this strategy may be straightforward and minimally state how the credit union intends to comply with the CCULR framework, including minimum capital requirements and qualifying criteria. In contrast, complex credit unions that do not opt into the CCULR framework will be required to have a more detailed written strategy. One commenter expressed concern about the subjective nature of this provision, and whether the agency has the statutory authority to adopt the provision if it would require individual credit unions to hold capital above those required by the rule or the FCUA. The Board disagrees. As discussed in the 2015 Final Rule, the NCUA has a long-established policy that FICUs should hold capital commensurate with the level and nature of the risks to which they are exposed. In some cases, this may entail holding capital above

[66] The Board notes that the amount of capital a complex credit union needs to be well capitalized under the 2015 Final Rule for PCA purposes is a different calculation than the amount of net worth required to be well capitalized for purposes of the MBL cap. The reason is the 2015 Final Rule permits complex credit unions to include several forms of capital for purposes of determining its PCA status that do not meet the statutory definition of net worth. The MBL cap, however, is limited by statute to net worth.

[67] Thus, the current language in part 723 remains valid, and the Board is not currently adopting any changes to part 723.

[68] S. Rep. No. 105–193 (May 21, 1998), at 5, 10, 29.

[69] 12 CFR 702.101(b)(2) (effective Jan. 1, 2022).

the minimum requirements, depending on the nature of the credit union's activities and risk profile. The FCUA grants NCUA broad authority to take action to ensure the safety and soundness of credit unions and the NCUSIF and to carry out the powers granted to the Board. Requiring credit unions to maintain capital adequacy is part of ensuring safety and soundness and is not a new concept. This provision is focused on the credit union's own process and strategy for assessing and maintaining its overall capital adequacy in relation to its risk profile and does not affect credit unions' PCA capital category. The provision is only intended to support the assessment of capital adequacy in the supervisory process, for example when assigning CAMELS and risk ratings.[70]

L. Amendments to the 2015 Final Rule

The Board stated its intent to holistically and comprehensively reevaluate the NCUA's capital standards for credit unions in the 2019 Final Rule. A principal component of this review is the CCULR framework. The Board also stated it would consider whether to make more substantive revisions to the 2015 Final Rule.[71] The Board has completed this analysis and is including several changes to the 2015 Final Rule. Each change is discussed in the following sections. The proposed changes are generally adopted as final without change.

1. Off-Balance Sheet Exposure Risk Weights

The 2015 Final Rule states that the risk-weighted amounts for all off-balance sheet items [72] are determined by multiplying the off-balance sheet exposure amount [73] by the appropriate credit conversion factor and the assigned risk weight. But the definition of off-balance sheet items is not aligned with the definition of off-balance sheet exposure. Under the 2015 Final Rule, only commitments, loans transferred with limited recourse, and loans transferred under the FHLB mortgage partnership finance program are provided explicit exposure amounts. The rule is silent on the appropriate treatment for the remaining items included in the definition of off-balance sheet items, for example contingent items, guarantees, certain repo-style transactions, financial standby letters of credit, and forward agreements. In addition, the 2015 Final Rule does not include a credit conversion factor or risk weight for the off-balance sheet items that are not provided a specific exposure amount in the definition of off-balance sheet exposure.

The final rule makes several changes to clarify the treatment of off-balance sheet items. First, as discussed previously, the final rule amends the definition of off-balance sheet exposures. This definition is used as one of the CCULR eligibility criteria and is amended to more closely align with the other banking agencies' CBLR framework. As a consequence of amending the definition of off-balance sheet exposure for the CCULR framework, the off-balance sheet exposure definition also more closely aligns with the existing definition of off-balance sheet items.[74] Thus, several items currently defined as an off-balance sheet item, but not included in the current definition of off-balance sheet exposure, are now provided an exposure amount. This change reduces ambiguity in the 2015 Final Rule. Further, each item included in the definition of off-balance sheet exposure in the final rule is provided an explicit credit conversion factor and risk weight for purposes of the risk-based capital rule. The Board did not receive any comments on the proposed off-balance sheet risk weights and is adopting them as final without change. Each change to the risk-based capital rule is discussed in detail in the following paragraphs.

The final rule states that unconditionally cancellable commitments have a zero percent credit conversion factor. Thus, any unconditionally cancellable commitment is excluded from a credit union's risk-based capital calculation. Under the 2015 Final Rule, these exposures receive a minimum of a 10 percent credit conversion factor and could receive up to a 50 percent credit conversion factor. The Board believes that many of credit unions' commitments qualify as unconditionally cancellable and that credit unions are currently subject to a more conservative treatment for unfunded commitments than banking organizations. Thus, the Board believes providing a zero percent conversion factor will not only make the 2015 Final Rule more comparable to the other banking agencies' 2013 capital rule but will also provide a significant burden reduction for credit unions calculating their capital adequacy under the 2015 Final Rule.

The 2015 Final Rule does not provide a credit conversion factor for financial standby letters of credit. Including an explicit 100 percent conversion factor provides parity between the other banking agencies and the NCUA. The final rule provides that financial standby letters of credit are given a 100 percent credit conversion factor.

The 2015 Final Rule does not provide a credit conversion factor for forward agreements that are not derivative contracts. Including an explicit 100 percent conversion factor provides parity between the other banking agencies and the NCUA. For forward agreements that are not derivative contracts, the final rule provides for a 100 percent credit conversion factor.

The 2015 Final Rule does not provide a credit conversion factor for sold credit protection through guarantees or credit derivatives. The final rule provides different risk weights for guarantees and credit derivatives. Guarantees would receive a 100 percent risk weight. For credit derivatives, the risk weight is determined through the applicable provisions of the FDIC's capital rules. A credit union offering credit protection through a credit derivative risk weights the exposure according to 12 CFR 324.34 (for derivatives that are not cleared) or 12 CFR 324.35 (for derivatives that are cleared exposures). For sold credit protection through guarantees and credit derivatives, the final rule provides for a 100 percent credit conversion factor.

The Board understands the treatment of credit derivatives is complex and compliance with these requirements increases the regulatory burden for credit unions that offer credit protection through credit derivatives. But credit derivatives are complex instruments. And, credit derivatives are not a permissible activity for FCUs, and the Board believes that state-chartered credit unions should only offer credit

[70] 86 FR 59282 (Oct. 27, 2021). The final rule updating the CAMEL system to CAMELS becomes effective April 1, 2022.

[71] 84 FR 68781, 68783 (Dec. 17, 2019).

[72] Off-balance sheet items are defined as items such as commitments, contingent items, guarantees, certain repo-style transactions, financial standby letters of credit, and forward agreements that are not included on the statement of financial condition, but are normally reported in the financial statement footnotes. 12 CFR 702.2 (effective Jan. 1, 2022).

[73] Off-balance sheet exposure means: (1) For loans transferred under the Federal Home Loan Bank mortgage partnership finance program, the outstanding loan balance as of the reporting date, net of any related valuation allowance; (2) For all other loans transferred with limited recourse or other seller-provided credit enhancements and that qualify for true sales accounting, the maximum contractual amount the credit union is exposed to according to the agreement, net of any related valuation allowance; and (3) For unfunded commitments, the remaining unfunded portion of the contractual agreement. 12 CFR 702.2 (effective Jan. 1, 2022).

[74] The only item included in the current definition of off-balance sheet item that is not provided an explicit exposure amount is contingent items. As discussed subsequently in this preamble, however, the Board is amending the definition of off-balance sheet item and no longer includes contingent items.

derivatives if the credit union has the appropriate resources and capabilities to manage the associated complexity. The Board believes any credit union that has offered credit protection through credit derivatives should also be capable of complying with the complexity in the FDIC's capital rules. Thus, the Board believes it is appropriate to reference the other banking agencies' 2013 capital rules when determining the appropriate risk weights for credit derivatives.[75]

For off-balance sheet securitization exposures, the credit conversion factor is 100 percent. The 2015 Final Rule does not currently provide a credit conversion factor for the off-balance sheet portion of securitization exposures. The risk weight is determined as if the exposure is an on-balance sheet securitization exposure. Under the 2015 Final Rule, the risk weight for securitization exposures is dependent upon whether the exposure is a subordinated or non-subordinated tranche. Non-subordinated tranches can receive a 100 percent risk weight (credit unions again have the option to use the gross up approach).[76] In contrast, a subordinated tranche receives a 1,250 percent risk weight. Credit unions also have the option to use the gross-up approach.[77]

The 2015 Final Rule does not provide a credit conversion factor for securities borrowing or lending transactions. Including an explicit 100 percent credit conversion factor provides parity between the other banking agencies and the NCUA. Unlike the other banking agencies' rules, the final rule includes a risk weight of 100 percent for these transactions. The Board is aware this may be a more conservative risk weight than for securities borrowing and lending transactions under the other banking agencies' 2013 capital rule. For securities borrowing or lending transactions, the credit conversion factor is 100 percent.

The final rule includes a 100 percent risk weight for simplicity. A credit union, however, may recognize the credit risk mitigation benefits of financial collateral by risk weighting the collateralized portion of the exposure under the applicable provisions of 12 CFR 324.35 or 324.37. Any collateral recognized must meet the definition of financial collateral under the other banking agencies 2013 capital rules.[78]

The final rule also includes a specific credit conversion factor and risk weight for the off-balance sheet exposure amount of repurchase transactions.[79] Under the final rule, the off-balance sheet exposure amount for a repurchase transaction equals all of the positions the credit union has sold or bought subject to repurchase or resale, which equals the sum of the current fair values of all such positions. The off-balance sheet exposure amounts of repurchase transactions are not provided a credit conversion factor under the 2015 Final Rule. The final rule provides a 100 percent risk weight for the off-balance sheet exposure amounts of repurchase transactions. A credit union may recognize the credit risk mitigation benefits of financial collateral, as defined by 12 CFR 324.2, by risk weighting the collateralized portion of the exposure under the applicable provisions of 12 CFR 324.35 or 324.37.[80]

The Board notes that repurchase transactions are not included in the definition of off-balance sheet exposure. This exclusion of repurchase transactions from the definition of off-balance sheet exposure is because the other banking agencies did not include repurchase transactions in their related measure of CBLR and the definition of off-balance sheet exposure is used for purposes of the CCULR eligibility criteria.[81]

Even though, for purposes of the CCULR framework, repurchase transactions are excluded from the off-balance sheet criterion, the Board believes that the off-balance sheet portion of repurchase transactions should be risk-weighted under the risk-based capital ratio. First, repurchase transactions are included in the current definition of off-balance sheet items. Second, the other banking agencies risk-weight the off-balance sheet portion of repurchase transactions in their risk-based capital framework.[82]

The Board, however, does not believe that repurchase transactions are a material exposure for credit unions. As of June 30, 2021, there are 26 complex credit unions with repurchase transactions on their balance sheets. Thus, the final rule includes the off-balance sheet portion of repurchase transactions for purposes of risk-based capital, even though such transactions are not included as part of the off-balance sheet eligibility criteria under the CCULR framework.[83]

Finally, the final rule includes a ''catchall'' category. Under the final rule, all other off-balance sheet exposures not explicitly provided a credit conversion factor or risk weight that meet the definition of a commitment are given a credit conversion factor of 100 percent and a risk weight of 100 percent. The Board believes a catchall category is necessary given that the definition of commitment is broad. Commitments include any legally binding arrangement that obligates the credit union to extend credit, purchase or sell assets, enter into a borrowing agreement, or enter into a financial transaction.[84] To ensure all off-balance sheet exposures that met the definition of commitment are provided a credit conversion factor and risk weight, the final rule includes a new catchall category for such exposures.

2. Asset Securitizations Issued by Complex Credit Unions

The 2019 Supplemental Rule included asset securitizations as one of the reasons the Board sought a holistic reevaluation of the 2015 Final Rule. The Board has further considered asset

[75] The Board is adopting these references for consistency and believes they are appropriate, but the Board will review these references in the future if the FDIC makes changes and will consider any adjustments as necessary.

[76] 12 CFR 702.104(c)(2)(v)(B)(8) (effective Jan. 1, 2022).

[77] 12 CFR 702.104(c)(2)(x) (effective Jan. 1, 2022).

[78] *See* 12 CFR 324.2. Financial collateral means collateral: (1) In the form of: (i) Cash on deposit with the FDIC-supervised institution (including cash held for the FDIC-supervised institution by a third-party custodian or trustee); (ii) Gold bullion; (iii) Long-term debt securities that are not resecuritization exposures and that are investment grade; (iv) Short-term debt instruments that are not resecuritization exposures and that are investment grade; (v) Equity securities that are publicly traded; (vi) Convertible bonds that are publicly traded; or (vii) Money market fund shares and other mutual fund shares if a price for the shares is publicly quoted daily; and (2) In which the FDIC-supervised institution has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof (with the exception of cash on deposit; and notwithstanding the prior security interest of any custodial agent or any priority security interest granted to a CCP in connection with collateral posted to that CCP).

[79] Repurchase transactions means either a transaction in which a credit union agrees to sell a security to a counterparty and to repurchase the same or an identical security from that counterparty at a specified future date and at a specified price or a transaction in which an investor agrees to purchase a security from a counterparty and to resell the same or an identical security to that counterparty at a specified future date and at a specified price.

[80] The Board is adopting references to the FDIC's regulations for consistency and believes that these references are appropriate, but the Board will review these references in the future if the FDIC makes changes and will consider any adjustments as necessary.

[81] 12 CFR 324.12(a)(2)(iii).

[82] 12 CFR 324.33(b)(4)(ii).

[83] The final rule also revises the definition of off-balance sheet items. The definition of off-balance sheet items includes off-balance sheet exposures and the off-balance sheet exposure amount of repurchase transactions. This change is necessary to ensure repurchase transactions are not included as part of the off-balance sheet criteria for eligibility in the CCULR framework.

[84] 12 CFR 702.2 (effective Jan. 1, 2022).

securitizations issued by credit unions and has decided to amend the 2015 Final Rule to explicitly address credit union issued securitizations.

The proposed rule required credit unions that issue securitizations to use the other banking agencies' 2013 capital rules when determining whether assets transferred in connection with a securitization are excluded from risk-based capital. The Board reviewed these standards and found they would be appropriate as applied to credit union securitizations, with the minor differences noted below. Specifically, under the final rule, a credit union must follow the requirements of the applicable provisions of 12 CFR 324.41 when it transfers exposures in connection with a securitization. A credit union may only exclude the transferred exposures from the calculation of its risk-weighted assets if each condition in 12 CFR 324.41 is satisfied. The conditions for traditional securitizations in 12 CFR 324.41 are as follows (adapted for credit unions):

(1) The exposures are not reported on the credit union's consolidated balance sheet under GAAP;

(2) The credit union has transferred to one or more third parties credit risk associated with the underlying exposures;

(3) Any clean-up calls relating to the securitization are eligible clean-up calls (a defined term under the other banking agencies' 2013 capital rules); [85] and

(4) The securitization does not:

(i) Include one or more underlying exposures in which the borrower is permitted to vary the drawn amount within an agreed limit under a line of credit; and

(ii) Contain an early amortization provision.

A credit union that meets the conditions, but retains any credit risk for the transferred exposures, must hold risk-based capital against the credit risk it retains in connection with the securitization.

The other banking agencies' 2013 rule includes conditions for both traditional securitizations and synthetic securitizations.[86] The Board believes almost all securitizations issued by credit unions would be traditional securitizations and subject to the conditions in 12 CFR 324.41(a). The Board does not believe that credit unions are likely to engage in synthetic securitizations; however, if a credit union issues a synthetic securitization, it is subject to the conditions in 12 CFR 324.41(b).

The Board also notes that 12 CFR 324.41(c) includes explicit due diligence requirements for banking organizations' investments in securitizations. The Board is not currently adopting these requirements. The final rule only references 12 CFR 324.41 to incorporate the factors a credit union must consider when excluding assets transferred in connection with a securitization from risk-weighted assets. The Board intends to use its supervisory authority to monitor securitizations for safety and soundness purposes and is not currently adopting any new regulatory requirements for such transactions.

The other banking agencies' 2013 capital rule has an explicit treatment for any gain-on-sale in connection with a securitization exposure and any credit-enhancing interest only strips (CEIOs) retained by a banking organization that do not qualify as a gain-on-sale. Any gain-on-sale in connection with a securitization exposure is deducted from a banking organization's common equity tier 1 capital.[87] CEIOs that do not qualify as a gain-on-sale are given a 1,250 percent risk weight.[88] The other banking agencies provided punitive treatments for these exposures because of historical supervisory concerns with the subjectivity involved in valuations of gains-on-sale and CEIOs. And though the treatments for gains-on-sale and CEIOs can increase an originating banking organization's risk-based capital requirement following a securitization, the other banking agencies believe that such anomalies are rare where a securitization transfers significant credit risk to third parties.

The 2015 Final Rule does not include specific treatments for gain-on-sales or CEIOs because, as discussed previously, in 2015 credit unions had not issued any securitizations. Under the 2015 Final Rule, however, most CEIOs would still receive a 1,250 percent risk weight because they constitute a subordinated tranche, but the 2015 Final Rule permits a credit union to use the gross-up approach as an alternative. The Board believes that credit union-issued securitizations should be given a similar capital treatment under the 2015 Final Rule as under the other banking agencies' risk-based capital rule.

Thus, the final rule includes a specific risk weight for certain exposures associated with securitization activities. While the Board believes the capital treatment for credit union-issued securitizations should be akin to bank-issued securitizations, the final rule is slightly different than the other banking agencies' 2013 risk-based capital rule for simplicity. Under the final rule, the gain-on-sale amount from a securitization transaction, generally the CEIO, will be included in the numerator in calculating a credit union's net worth. This is a different approach than the other banking agencies' rule, which excludes gains-on-sale in calculating a bank's common equity tier 1 capital. Instead, the Board has chosen to address the risks associated with a gain-on-sale amount by requiring that a 1,250 percent risk weighting be applied to retained non-security beneficial interests.

One commenter specifically supported the securitization framework, which generally references the capital rule of the other banking agencies. Another commenter questioned why the Board did not adopt the entirety of the other banking agencies' framework and recommended granting complex credit unions the option to use the gross-up approach for risk weighting non-security beneficial interest of a securitization. The commenter stated that this would ensure that credit unions have at least the same flexibility as non-advanced approaches banks. The other banking agencies do not permit the use of the gross-up approach for a securitization gain-on-sale, and require the full deduction of the gain-on-sale from the tier 1 capital numerator.[89] Further, the Board believes its approach is simpler and provides a more conservative overall risk weight. The Board believes this approach is warranted given the limited

[85] Under the other banking agencies' 2013 capital rules, eligible clean-up call means a clean-up call that: (1) Is exercisable solely at the discretion of the originating institution or servicer; (2) is not structured to avoid allocating losses to securitization exposures held by investors or otherwise structured to provide credit enhancement to the securitization; and (3)(i) for a traditional securitization, is only exercisable when 10 percent or less of the principal amount of the underlying exposures or securitization exposures (determined as of the inception of the securitization) is outstanding; or (ii) for a synthetic securitization, is only exercisable when 10 percent or less of the principal amount of the reference portfolio of underlying exposures (determined as of the inception of the securitization) is outstanding.

[86] Under the other banking agencies' 2013 capital rule, a synthetic securitization means a transaction in which: (1) All or a portion of the credit risk of one or more underlying exposures is retained or transferred to one or more third parties through the use of one or more credit derivatives or guarantees (other than a guarantee that transfers only the credit risk of an individual retail exposure); (2) The credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority; (3) Performance of the securitization exposures depends upon the performance of the underlying exposures; and (4) All or substantially all of the underlying exposures are financial exposures (such as loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities). *See,* 12 CFR 324.2.

[87] *See,* 12 CFR 324.22(a)(4) and 12 CFR 324.42(a)(1).

[88] *See,* 12 CFR 324.42(a)(1).

[89] 12 CFR 324.22(a)(4).

securitizations issued by credit unions at this time.

Under the final rule, a non-security beneficial interest is defined as the residual equity interest in the special purpose entity that represents a right to receive possible future payments after specified payment amounts are made to third-party investors in the securitized receivables. Thus, under the final rule, if a credit union has a non-security beneficial interest, such as a CEIO or cash collateral account, it cannot be risk-weighted with the gross-up approach and instead would be given a 1,250-risk weight. The Board believes this treatment is akin to the treatment provided by the other banking agencies in their 2013 risk-based capital rule.

The Board notes that subordinate tranches, either retained by the securitization sponsor or offered to investors as securities, that are also senior in payment priority to the non-security beneficial interest, can be risk-weighted using the gross-up approach.

The Board also notes that although the final rule is currently adopting the FDIC's approach to securitization through a cross reference, as with other FDIC provisions referenced elsewhere in this final rule, the Board will review the FDIC's treatment of securitizations in the future if it makes changes and will consider any adjustments as necessary.

3. Mortgage Servicing Assets

The Board proposed to amend 12 CFR 702.104(b), risk-based capital numerator, to deduct mortgage servicing assets that exceed 25 percent of the sum of the capital elements in 12 CFR 702.104(b)(1), less deductions required under 12 CFR 702.104(b)(2)(i) through (iv) of this section. A few commenters did not support the proposed deduction of MSAs. One commenter noted that CCULR lacks a comparable restriction and the risk-based capital rule is primarily designed for credit risk and not operational or market risk.

The Board is not making changes in response to the commenters.

The Board is including a deduction to the risk-based capital numerator for MSAs that exceed 25 percent of the risk-based capital numerator for two primary reasons. First, this change will make the NCUA's risk-based capital calculation more consistent with the other banking agencies' revised risk-based capital rules as the other banking agencies simplified their MSA calculation post-issuance of the 2015 Final Rule.[90] Under the other banking agencies' revised risk-based capital rule, banking organizations deduct MSAs that exceed 25 percent of the banking organization's common equity tier 1 capital.[91] The Board believes the simplification of the other banking agencies' approach allows the NCUA to be consistent with the other banking agencies' risk-based capital rule. Also, the Board believes it is important to implement prudential conditions around MSAs as the Board is considering a final rule to amend parts 703 and 721 to allow FCUs to purchase mortgage servicing rights[92] from other FICUs.[93] This rule may potentially increase MSA holdings for complex credit unions.

The Board believes that, by including a deduction to the risk-based capital numerator for MSAs in risk-based capital, complex credit unions will be encouraged to avoid excessive exposures in MSAs relative to the other risks on their balance sheets. As mentioned in the preamble of the 2015 Final Rule, the risks of MSAs contribute to a high level of uncertainty regarding the ability of credit unions to realize value from these assets. Thus, the Board believes it is appropriate to add the risk-based numerator deduction to address the potential of complex credit unions purchasing MSAs from other FICUs.

The treatment would not have an immediate effect on complex credit unions. As of June 30, 2021, the largest concentration in MSAs held by complex credit unions was just under 12 percent of the credit union's net worth. While net worth and the risk-based capital numerator are different calculations, the two calculations are similar enough to state, with a high degree of certainty, there are no complex credit unions as of June 30, 2021, that would be required to deduct MSAs from the risk-based capital numerator.

Finally, the Board is aware that some commenters believe deducting exposures of MSAs over 25 percent of their risk-based capital numerator is punitive. The Board notes both the Board and other banking agencies have stated that MSAs have a relatively high level of uncertainty regarding the ability to both value and realize value from these assets.[94] The Board also believes including the MSA deduction from the risk-based capital numerator is prudent for potential balance sheets complex credit union may have in the future.

To determine if a complex credit union would be subject to the MSA deduction from the risk-based capital numerator, the complex credit union first needs to calculate the risk-based capital numerator before the MSA deduction. This calculation is in the 2015 Final Rule and requires the complex credit union add all the capital elements of the risk-based capital numerator and subtract all risk-based capital numerator deductions, not including the MSA deduction. The complex credit union would then determine if its MSA exposure exceeds 25 percent of the previous calculation. If its MSAs do not exceed 25 percent, the previous calculation is the risk-based capital numerator. If its MSAs exceed 25 percent, the complex credit union will need to deduct the amount of MSAs that exceed 25 percent from the previous calculation. All MSA exposures that are not deducted from the risk-based capital numerator are risk-weighted in the risk-based capital denominator at 250 percent.

4. Supranational Organizations and Multilateral Development Banks

The Board proposed amending the risk-based capital rule to assign a risk weighting of zero percent to an obligation of the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, and multilateral development banks (MDBs). The 2015 Final Rule did not specifically discuss MDBs, which would have a risk weight of 100 percent under the catchall category for all other assets not specifically assigned a risk weight.[95] Assigning a risk-weight of zero percent is consistent with the other banking agencies' risk-based capital rule and the Board believes the zero percent risk weight is appropriate due to the generally high-credit quality of the issuers. A few commenters specifically supported the zero percent risk weight for supranational entities, and none opposed it. The Board is finalizing this provision without change. The Board notes that MDBs are not permissible investments for FCUs under the general investment authorities but may be permissible for federally insured, state-chartered credit unions under state investment authorities. But FCUs may invest in MDBs under 12 CFR 701.19

[90] 84 FR 35234 (July 22, 2019).

[91] 12 CFR 324.22(d).

[92] The terms mortgage servicing rights and MSAs are used interchangeably.

[93] 85 FR 86867 (Dec. 31, 2020).

[94] Report to Congress on the Effect of Capital Rules on Mortgage Servicing Assets, Report to the Congress on the Effect of Capital Rules on Mortgage Servicing Assets, June 2016, *available at https://www.federalreserve.gov/publications/other-reports/files/effect-capital-rules-mortgage-servicing-assets-201606.pdf.*

[95] 12 CFR 702.104(c)(2)(v)(C) (effective Jan. 1, 2022).

and 721.3(b), subject to some conditions.

5. Paycheck Protection Program Loans

As discussed previously in connection with the other banking agencies' CBLR regulation, the CARES Act was enacted in 2020 to provide aid to the U.S. economy during COVID–19.[96] The CARES Act authorized the Small Business Administration (SBA) to create a loan guarantee program, the Paycheck Protection Program (PPP), to help certain affected businesses meet payroll needs and utilities as a result of COVID–19, including employee salaries, sick leave, other paid leave, and health insurance expenses. Provided credit union lenders comply with the applicable lender obligations set forth in the SBA's interim final rule, the SBA fully guaranteed loans issued under the PPP. Most FICUs were eligible to make PPP loans to members. Under the CARES Act, PPP loans must receive a zero percent risk weighting under the NCUA's risk-based capital requirements.[97]

The NCUA issued a 2020 interim final rule to explicitly state that PPP loans under the risk-based net worth requirement receive a zero percent risk-weight.[98] The 2020 interim final rule stated the NCUA's risk-based capital regulations would be amended in the future. The Board proposed to update the 2015 Final Rule to reflect that PPP loans receive a zero percent risk weight. No comments were received on this proposed change and the Board is now finalizing it as proposed.

6. Updates to Derivative-Related Definitions

The Board recently amended its rule on derivatives to modernize the rule and make it more principles-based while retaining key safety and soundness components.[99] The rulemaking amended several defined terms that are also included in the 2015 Final Rule. For consistency, the proposed rule updated those definitions that are also included in the 2015 Final Rule. The Board received no comments on these changes and is now finalizing it without additional change. First, under the final rule, the term derivative is defined as ''a financial contract that derives its value from the value and performance of some other underlying financial instrument or variable, such as an index or interest rate.'' [100] Second, the rule makes minor changes to the definitions of a derivative clearing organization and swap dealer by including a more general reference to the Commodity Futures Trading Commission (CFTC)'s regulations. For both definitions, the 2015 Final Rule references the definitions used by the CFTC.[101] The Board is adopting references to the CFTC regulations for consistency and believes these definitions appropriately define the terms, but the Board will review these references in the future if the CFTC makes changes and will adjust as necessary.

7. Definitions of Consumer Loan and Current

The Board proposed to amend the definitions for Consumer Loan and Current in 12 CFR 702.2. The Board received no comments on this proposed change and is now finalizing it without change. The Board is amending these definitions to clarify the 2015 Final Rule. The 2015 Final Rule does not include leases in the definition of Consumer Loan, although the 2014 Risk-Based Capital notice of proposed rulemaking stated ''[c]onsumer loans (unsecured credit card loans, lines of credit, automobile loans, and leases) are generally highly desired credit union assets and a key element of providing basic financial services.'' [102] Without this change the treatment of consumer leases is unclear and, thus, may be risk-weighted in the catchall category of 100 percent. The change makes clear that consumer leases receive a 75 percent risk weight. Due to the amendment in the definition of a consumer loan, the definition of current is also amended for consistency and includes the term leases.

8. Treatment of Goodwill in the 2015 Final Rule

The 2015 Final Rule requires complex credit unions to deduct goodwill [103] from the risk-based capital numerator. The proposed rule did not include any changes to the deduction of goodwill under the 2015 Final Rule. The proposed rule, however, asked about the advantages and disadvantages of deducting goodwill from regulatory capital under the 2015 Final Rule. The proposed rule also asked commenters whether not deducting goodwill from regulatory capital would adequately protect the NCUSIF in the event of a failure and liquidation given that goodwill is not a tangible asset. Several commenters urged the agency to permit credit unions to include goodwill in the risk-based capital numerator. One commenter stated that deducting supervisory goodwill restricts growth and decreases the likelihood that a healthy, well-capitalized credit union will assist with a supervisory merger of an under-capitalized credit union. Another commenter said the deduction penalizes credit unions that have just gone through a merger.

Under the 2015 Final Rule, the Board permitted credit unions to exclude certain goodwill and other intangible assets from the deduction in the numerator that occurred on or before December 28, 2015. The proposed rule asked whether this date should be updated considering the subsequent delays to the risk-based capital rule. A few commenters encouraged the agency to alleviate any potential confusion by amending this date. Several commenters suggested grandfathering all goodwill prior the effective date of the CCULR framework or the risk-based capital framework. Another commenter recommended establishing a formal approval process for grandfathered goodwill with required criteria such as annual goodwill impairment testing. Another commenter stated that the relief provided by the original 13-year period, in which grandfathered goodwill is not deducted, has been diminished due to the delayed effective date for the risk-based capital rule.

As discussed previously, in response to comments about the proposed treatment of goodwill, the Board has made two changes in the final rule. The first change modifies the CCULR qualifying criteria by not including excluded goodwill and excluded other intangible assets as part of the calculation of the two percent qualifying

[96] Public Law 116–136 (Mar. 27, 2020).

[97] Public Law 116–136, 134 Stat. 281 (Mar. 27, 2020)

[98] 85 FR 23212 (Apr. 27, 2020).

[99] 86 FR 28241 (May 26, 2021).

[100] The 2015 Final Rule defines a derivative contract as ''a financial contract whose value is derived from the values of one or more underlying assets, reference rates, or indices of asset values or reference rates. Derivative contracts include interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, and credit derivative contracts. Derivative contracts also include unsettled securities, commodities, and foreign exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument or five business days.'' 12 CFR 702.2 (effective Jan. 1, 2022).

[101] The 2015 Final Rule states a derivative clearing organization is ''as defined by the Commodity Futures Trading Commission in 17 CFR 1.3(d).'' The final rule defines a derivative clearing organization ''as defined by the Commodity Futures Trading Commission (CFTC) in 17 CFR 1.3.'' Essentially the final rule removes the ''(d)''. Similarly, the more specific reference in the 2015 Final Rule is updated with the more general reference included in the recent derivative rule.

[102] 79 FR 11184, 11198 (Feb. 27, 2014).

[103] Note that under the 2015 Final Rule, the term goodwill does not include excluded goodwill. See, 12 CFR 702.2 (effective Jan. 1, 2022).

criteria. This change aligns the treatment of goodwill in CCULR with the treatment in risk-based capital. For additional discussion on this change, see *Section B. Qualifying Complex Credit Unions.*

The final rule also amends the treatment of goodwill under the 2015 Final Rule. Specifically, the final rule removes the 2029 sunset date for excluded goodwill and excluded other intangible assets. Under the final rule, credit unions will not be required to deduct excluded goodwill from the risk-based capital numerator, even after January 1, 2029. Credit unions would not be required to deduct other intangible assets such as core deposit intangible, member relationship intangible, or trade name intangible originating from a supervisory merger or combination that was completed on or before December 28, 2015. The Board believes credit unions that previously supported the NCUSIF by assisting in supervisory mergers should not be penalized for these decisions. Specifically, the Board is amending the 2015 Final Rule in response to commenters' concerns relating to the deduction of excluded goodwill from the risk-based capital numerator after the completion of supervisory mergers. The Board does not believe the subsequent change in capital treatment will unduly penalize credit unions.

M. Technical Amendments

The final rule includes several technical amendments to part 702, including some discussed in the proposed rule and others that the Board has identified in finalizing this rule. First, the definition of total assets in 12 CFR 702.2 is amended to carry forward the PPP-related change made in the 2020 interim final rule. Specifically, under the final rule, the definition of total assets would be amended to explicitly state that PPP loans pledged to the Federal Reserve Board's PPP Lending Facility to support PPP lending are excluded from the definition of total assets.[104] This 2020 interim final rule made this change to the definition of total assets in the currently effective version of 12 CFR 702.2, but did not make the change to the definition of total assets as implemented by the 2015 Final Rule. This technical correction will ensure the definition carries past 2021 as intended. The definition will also include an amended citation. The 2015 Final Rule stated that, for each quarter, a credit union must elect one of the measures of total assets to apply except for 12 CFR 702.103 through 702.106 (risk-based capital requirement). The exception should be for 12 CFR 702.103 through 702.105. This change has been made in the final rule.

The second technical amendment adjusts the definition of the net worth ratio from the 2015 Final Rule. The change clarifies that the net worth ratio is rounded to two decimal places, but the rounding occurs only after the ratio is expressed as percentage.

The final rule also includes two technical amendments to 12 CFR part 703 that were included in the proposed rule. Both amendments make minor corrections related to the 2015 Final Rule. The Board received no comment on the proposed amendments and is finalizing them without change.

N. Other Comments Beyond the Scope of the Proposed Rule

Several commenters offered recommendations that went beyond the scope of the proposed changes to the 2015 Final Rule. For example, several commenters recommended the Board consider rescinding or delaying the 2015 Final Rule. The Board continues to believe the current risk-based net worth standards have weaknesses and revised standards with enhanced risk sensitivity are appropriate for complex credit unions. The Board is not currently rescinding the 2015 Final Rule. Delaying the 2015 Final Rule is also outside the scope of the proposed rule, which did not discuss amending the effective date of the 2015 Final Rule. Also, the Board continues to believe that a delay to the effective date of the 2015 Final Rule is unnecessary, as discussed previously.

Another commenter recommended the Board consider refinements to the subordinated debt framework contemporaneously with changes to the risk-based capital rule. Neither the subordinated debt final rule nor the 2015 Final Rule are yet effective. The Board will separately monitor implementation of the subordinated rule and consider any appropriate changes in the future.

Other commenters urged the Board to eliminate the higher risk-weighting for concentrations of first-lien mortgages, junior-lien mortgages, MSAs, and commercial loans. One commenter stated these concentration limits are not generally comparable to the risk-based capital rules of the other banking agencies or the Basel Framework. One commenter requested investments in CUSOs be risk-weighted at no more than 100 percent. Another commenter stated MSAs should not be subject to a higher risk weight under the risk-based capital rule, which is currently 250 percent. The commenter recommended 150 percent. The Board believes these recommendations are beyond the scope of the proposed rule. As discussed previously, amendments to risk-weights can be considered anytime in the future by the Board, or during the Board's regular process to review regulations every three years.

V. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act[105] requires the NCUA to prepare an analysis describing any significant economic impact a regulation may have on a substantial number of small entities (primarily those under $100 million in assets).[106] This final rule affects only credit unions with over $500 million in assets, which are subject to the 2015 Final Rule and the 2018 Supplemental Rule when they go into effect in January 2022. As a result, credit unions with under $100 million in total assets would not be affected by this final rule. Accordingly, the NCUA certifies this final rule does not have a significant economic impact on substantial number of 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 amends an existing burden. For purposes of the PRA, a paperwork burden may take the form of a reporting, disclosure or recordkeeping requirement, each referred to as an information collection. The final rule will revise existing information collection requirements to the Call Report (Office of Management and Budget control number 3133–0004). These revisions will be addressed in a separate **Federal Register** notice and will be submitted for approval by the Office of Information and Regulatory Affairs at the Office of Management and Budget.

C. Executive Order 13132 on Federalism

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests.[107] The NCUA, an independent regulatory agency, as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to

[104] Specifically, the 2020 interim final rule updated the currently effective § 702.2 and the definition of total assets, however, the interim final rule did not update the definition of total assets that will be effective January 1, 2022.

[105] 5 U.S.C. 601 *et seq.*

[106] 5 U.S.C. 603(a).

[107] 64 FR 43255 (Aug. 4, 1999).

adhere to fundamental federalism principles. The final rule applies to all federally insured natural-person credit unions, including federally insured, state-chartered natural-person credit unions. Accordingly, the Final Rule 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. The Board believes this impact is minor, and it is an unavoidable consequence of executing the statutory mandate to adopt a system of PCA to apply to all federally insured, natural-person credit unions. The NCUA has consulted with representatives of state regulators regarding the impact of the final rule during the rulemaking process.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this rule would 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).

E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) generally provides for congressional review of agency rules.[108] A reporting requirement is triggered in instances where the NCUA issues a final rule as defined in the Administrative Procedure Act.[109] Besides being subject to congressional oversight, an agency rule may also be subject to a delayed effective date if it is a ''major rule.'' As required by SBREFA, the NCUA will submit this final rule to the Office of Management and Budget for it to determine if it is a ''major rule'' for purposes of SBREFA. The NCUA also will file appropriate reports with Congress and the Government Accountability Office so this rule may be reviewed.

F. Administrative Procedure Act

The Administrative Procedure Act typically requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.[110] Because qualifying complex credit unions that opt into the CCULR framework under the final rule are exempt from compliance with the 2015 Final Rule, the final rule is exempt from the Administrative Procedure Act's delayed effective date requirement.

List of Subjects

12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 703

Credit unions, Investments, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 16, 2021.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons stated in the preamble, the NCUA amends 12 CFR parts 702 and 703, as follows:

PART 702—CAPITAL ADEQUACY

■ 1. The authority for part 702 continues to read as follows:

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

■ 2. Amend § 702.2 by:
■ a. Adding in alphabetical order the definitions of ''*CCULR*'';
■ b. Revising the definition of ''*Consumer Loan*'',
■ c. Adding in alphabetical order the definition of ''*Credit derivative*'';
■ d. Revising the definitions of ''*Current*'', ''*Derivative contract*'', ''*Derivatives Clearing Organization*'', ''*Excluded goodwill*'', ''*Excluded other intangible assets*'';
■ e. Adding in alphabetical order the definitions of ''*Forward agreement*'', ''*Multilateral development bank*'';
■ f. Revising the definition of ''*Net worth ratio*'';
■ g. Adding in alphabetical order the definition of ''*Non-security beneficial interest*'';
■ h. Revising the definition of ''*Off-balance sheet exposure*'', ''*Off-balance sheet items*'';
■ i. Adding in alphabetical order the definition of ''*Repurchase transaction,*''
■ j. Revising the definitions of ''*Swap dealer*'', and ''*Total assets*''; and
■ k. Adding in alphabetical order the definitions ''*Trading assets*'', ''*Trading liabilities*'', and ''*Unconditionally cancelable*''.

The revisions and additions read as follows:

§ 702.2 Definitions.

* * * * *

CCULR means the complex credit union leverage ratio. It is calculated in the same manner as the net worth ratio under § 702.2.

* * * * *

Consumer loan means a loan or lease for household, family, or other personal expenditures, including any loans or leases that, at origination, are wholly or substantially secured by vehicles generally manufactured for personal, family, or household use regardless of the purpose of the loan or lease. Consumer loan excludes commercial loans, loans to CUSOs, first- and junior-lien residential real estate loans, and loans for the purchase of one or more vehicles to be part of a fleet of vehicles.

* * * * *

Credit derivative means a financial contract executed under standard industry credit derivative documentation that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure(s)) to another party (the protection provider) for a certain period of time.

* * * * *

Current means, with respect to any loan or lease, that the loan or lease is less than 90 days past due, not placed on non-accrual status, and not restructured.

* * * * *

Derivative contract means a financial contract that derives its value from the value and performance of some other underlying financial instrument or variable, such as an index or interest rate.

Derivatives Clearing Organization has the meaning as defined by the Commodity Futures Trading Commission (CFTC) in 17 CFR 1.3.

* * * * *

Excluded goodwill means the outstanding balance, maintained in accordance with GAAP, of any goodwill originating from a supervisory merger or combination that was completed on or before December 28, 2015.

Excluded other intangible assets means the outstanding balance, maintained in accordance with GAAP, of any other intangible assets such as core deposit intangible, member relationship intangible, or trade name intangible originating from a supervisory merger or combination that was completed on or before December 28, 2015.

* * * * *

Forward agreement means a legally binding contractual obligation to purchase assets with certain drawdown at a specified future date, not including commitments to make residential mortgage loans or forward foreign exchange contracts.

* * * * *

Multilateral development bank (MDB) means the International Bank for

[108] 5 U.S.C. 551.
[109] *Id.*
[110] 5 U.S.C. 553(d).

Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, and any other multilateral lending institution or regional development bank in which the U.S. government is a shareholder or contributing member.

* * * * *

Net worth ratio means the ratio of the net worth of the credit union to the total assets of the credit union, expressed as a percentage rounded to two decimal places.

* * * * *

Non-security beneficial interest is defined as the residual equity interest in the Special Purpose Entity (SPE) that represents a right to receive possible future payments after specified payment amounts are made to third-party investors in the securitized receivables. For purposes of this definition, a SPE means a trust, bankruptcy remote entity or other special purpose entity which is wholly owned, directly or indirectly, by the credit union and which is formed for the purpose of, and engages in no material business other than, acting as an issuer or a depositor in a securitization.

* * * * *

Off-balance sheet exposure means:

(1) For unfunded commitments, excluding unconditionally cancellable commitments, the remaining unfunded portion of the contractual agreement.

(2) For loans transferred with limited recourse, or other seller-provided credit enhancements, and that qualify for true sales accounting, the maximum contractual amount the credit union is exposed to according to the agreement, net of any related valuation allowance.

(3) For loans transferred under the Federal Home Loan Bank (FHLB) mortgage partnership finance program, the outstanding loan balance as of the reporting date, net of any related valuation allowance.

(4) For financial standby letters of credit, the total potential exposure of the credit union under the contractual agreement.

(5) For forward agreements that are not derivative contracts, the future contractual obligation amount.

(6) For sold credit protection through guarantees and credit derivatives, the total potential exposure of the credit union under the contractual agreement.

(7) For off-balance sheet securitization exposures, the notional amount of the off-balance sheet credit exposure (including any credit enhancements, representations, or warranties that obligate a credit union to protect another party from losses arising from the credit risk of the underlying exposures) that arises from a securitization.

(8) For securities borrowing or lending transactions, the amount of all securities borrowed or lent against collateral or on an uncollateralized basis.

Off-balance sheet items means off-balance sheet exposures and the off-balance sheet exposure amount of repurchase transactions.

* * * * *

Repurchase transactions means either a transaction in which a credit union agrees to sell a security to a counterparty and to repurchase the same or an identical security from that counterparty at a specified future date and at a specified price or a transaction in which an investor agrees to purchase a security from a counterparty and to resell the same or an identical security to that counterparty at a specified future date and at a specified price. The off-balance sheet exposure amount for a repurchase transaction equals all of the positions the credit union has sold or bought subject to repurchase or resale, which equals the sum of the current fair values of all such positions.

* * * * *

Swap Dealer has the meaning as defined by the CFTC in 17 CFR 1.3.

* * * * *

Total assets means a credit union's total assets as measured by either:

(1)(i) Average quarterly balance. The credit union's total assets measured by the average of quarter-end balances of the current and three preceding calendar quarters;

(ii) Average monthly balance. The credit union's total assets measured by the average of month-end balances over the three calendar months of the applicable calendar quarter;

(iii) Average daily balance. The credit union's total assets measured by the average daily balance over the applicable calendar quarter; or

(iv) Quarter-end balance. The credit union's total assets measured by the quarter-end balance of the applicable calendar quarter as reported on the credit union's Call Report.

(2) For each quarter, a credit union must elect one of the measures of total assets listed in paragraph (1) of this definition to apply for all purposes under this part except §§ 702.103 through 702.105 (risk-based capital requirement).

(3) Notwithstanding paragraph (1) of this definition, a credit union may exclude loans pledged as collateral for a non-recourse loan that is provided as part of the Paycheck Protection Program Lending Facility, announced by the Federal Reserve Board on April 7, 2020, from the calculation of total assets for the purpose of calculating its net worth ratio. For the purpose of this provision, a credit union's liability under the Facility must be reduced by the principal amount of the loans pledged as collateral for funds advanced under the Facility.

* * * * *

Trading assets means securities or other assets acquired, not including loans originated by the credit union, for the purpose of selling in the near term or otherwise with the intent to resell in order to profit from short-term price movements. Trading assets would not include shares of a registered investment company or a collective investment fund used for liquidity purposes.

Trading liabilities means the total liability for short positions of securities or other liabilities held for trading purposes.

* * * * *

Unconditionally cancelable means with respect to a commitment, that a credit union may, at any time, with or without cause, refuse to extend credit under the commitment (to the extent permitted under applicable law).

* * * * *

■ 3. In § 702.101, revise paragraph (a)(2) to read as follows:

§ 702.101 Capital measures, capital adequacy, effective date of classification, and notice to NCUA.

(a) * * *

(2) If determined to be applicable under § 702.103, either the risk-based capital ratio under § 702.104(a) through (c) or the CCULR framework under § 702.104(d).

* * * * *

■ 4. In § 702.102, revise paragraphs (a)(1)(i) and (ii), and Table 1 to read as follows:

§ 702.102 Capital classification.

(a) * * *

(1) * * *

(i)(A) *Net worth ratio.* The credit union has a net worth ratio of 7.0 percent or greater; and

(B) *Risk-based capital ratio.* The credit union, if complex, has a risk-based capital ratio of 10 percent or greater; or

(ii) *Complex credit union leverage ratio.* (A) The complex credit union is a qualifying complex credit union that has opted into the CCULR framework under § 702.104(d) and it has a CCULR of 9.0 percent or greater; or

(B) The complex credit union is a qualifying complex credit union that has opted into the CCULR framework under § 702.104(d), is in the grace period, as defined in § 702.104(d)(7), and has a CCULR of 7.0 percent or greater.

* * * * *

TABLE 1 TO § 702.102—CAPITAL CATEGORIES

Capital classification	Net worth ratio		Risk-based capital ratio, if applicable		CCULR, if applicable	And subject to following condition(s) . . .
Well Capitalized	7% or greater	And	10% or greater	Or	9% or greater*	
Adequately Capitalized.	6% or greater	And	8% or greater	Or	N/A	And does not meet the criteria to be classified as well capitalized.
Undercapitalized	4% to 5.99%	Or	Less than 8%	Or	N/A	
Significantly Undercapitalized.	2% to 3.99%		N/A		N/A	Or if ''undercapitalized at <5% net worth and (a) fails to timely submit, (b) fails to materially implement, or (c) receives notice of the rejection of a net worth restoration plan.
Critically Undercapitalized.	Less than 2%		N/A		N/A	

* A qualifying complex credit union opting into the CCULR framework should refer to 12 CFR 702.104(d)(7) if its CCULR falls below 9.0 percent.

* * * * *

■ 5. Revise § 702.103 to read as follows:

§ 702.103 Applicability of risk-based capital measures.

For purposes of § 702.102, a credit union is defined as ''complex'' and a risk-based capital measure is applicable only if the credit union's quarter-end total assets exceed five hundred million dollars ($500,000,000), as reflected in its most recent Call Report. A complex credit union may calculate its risk-based capital measure either by using the risk-based capital ratio under § 702.104(a) through (c), or, for a qualifying complex credit union opting into the CCULR framework, by using the CCULR framework under § 702.104(d).

■ 6. In § 702.104:

■ a. Revise the introductory text;

■ b. Remove the word ''and'' at the end of paragraph (b)(2)(iii);

■ c. Remove the period at the end of paragraph (b)(2)(iv) and add in its place ''; and;

■ d. Add paragraph (b)(2)(v);

■ e. Add paragraphs (c)(2)(i)(B)(*3*) and (c)(2)(i)(D);

■ f. Revise paragraphs (c)(2)(vii) and (x);

■ g. Revise paragraph (c)(4) introductory text;

■ h. Redesignate paragraphs (c)(4)(iii)(A) through (E) as (c)(4)(iii)(B) through (F) and add new paragraph (c)(4)(iii)(A);

■ i. Add paragraphs (c)(4)(iv) through (x); and

■ j. Add paragraphs (c)(6), (d), and (e).

The revisions and additions read as follows:

§ 702.104 Risk-based capital ratio.

A complex credit union must calculate its risk-based capital measure in accordance with this section. A complex credit union may calculate its risk-based capital measure either by using the risk-based capital ratio under paragraphs (a) through (c) of this section, or, for a qualifying complex credit union opting into the CCULR framework, by using the CCULR framework under paragraph (d) of this section.

* * * * *

(b) * * *

(2) * * *

(v) Mortgage servicing assets that exceed 25 percent of the sum of the capital elements in paragraph (b)(1) of this section, less deductions required under paragraphs (b)(2)(i) thorough (iv) of this section.

(c) * * *

(2) * * *

(i) * * *

(B) * * *

(*3*) An obligation of the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, or an MDB.

* * * * *

(D) Covered loans issued under the Small Business Administration's Paycheck Protection Program, 15 U.S.C. 636(a)(36).

* * * * *

(vii) Category 7—250 percent risk weight. A credit union must assign a 250 percent risk weight to the carrying value of mortgage servicing assets not deducted from the risk-based capital numerator pursuant to § 702.104(b).

* * * * *

(x) *Category 10—1,250 percent risk weight.* A credit union must assign a 1,250 percent risk weight to the exposure amount of any subordinated tranche of any investment, with the option to use the gross-up approach in paragraph (c)(3)(iii)(A) of this section. However, a credit union may not use the gross-up approach for non-security beneficial interests.

* * * * *

(4) *Risk weights for off-balance sheet items.* The risk weighted amounts for all off-balance sheet items are determined by multiplying the off-balance sheet exposure amount by the appropriate CCF and the assigned risk weight as follows:

* * * * *

(iii) * * *

(A) For a commitment that is unconditionally cancelable, a 0 percent CCF.

* * * * *

(iv) For financial standby letter of credits, a 100 percent CCF and a 100 percent risk weight.

(v) For forward agreements that are not derivative contracts, a 100 percent CCF and a 100 percent risk weight.

(vi) For sold credit protection through guarantees and credit derivatives, a 100 percent CCF and a 100 percent risk weight for guarantees; for credit derivatives the risk weight is determined by the applicable provisions of 12 CFR 324.34 or 324.35.

(vii) For off-balance sheet securitization exposures, a 100 percent CCF, and the risk weight is determined as if the exposure is an on-balance sheet securitization exposure.

(viii) For securities borrowing or lending transactions, a 100 percent CCF and a 100 percent risk weight. A credit union may recognize the credit risk mitigation benefits of financial collateral, as defined under 12 CFR 324.2, by risk weighting the collateralized portion of the exposure under the applicable provisions of 12 CFR 324.35 or 324.37.

(ix) For the off-balance sheet portion of repurchase transactions, a 100 percent CCF and a 100 percent risk weight. A credit union may recognize the credit risk mitigation benefits of financial collateral, as defined by 12 CFR 324.2, by risk weighting the collateralized portion of the exposure under the applicable provisions of 12 CFR 324.35 or 324.37.

(x) For all other off-balance sheet exposures not explicitly provided a CCF or risk weight in this paragraph (c) that meet the definition of a commitment, a 100 percent CCF and a 100 percent risk weight.

* * * * *

(6) Asset Securitizations Issued by Complex Credit Unions. A credit union must follow the requirements of the applicable provisions of 12 CFR 324.41 when it transfers exposures in connection with a securitization. A credit union may only exclude the transferred exposures from the calculation of its risk-weighted assets if each condition in 12 CFR 324.41 is satisfied. A credit union that meets these conditions, but retains any credit risk for the transferred exposures, must hold risk-based capital against the credit risk it retains in connection with the securitization.

(d) *Complex Credit Union Leverage Ratio (CCULR) Framework.* (1) *General.* A qualifying complex credit union that has opted into the CCULR framework under paragraph (d)(5) of this section is considered to have met the capital ratio requirements for the well capitalized capital category under § 702.102(a)(1) if it has a CCULR of 9.0 percent or greater.

(2) *Qualifying Complex Credit Union.* For purposes of this part, a qualifying complex credit union means a complex credit union under § 702.103 that satisfies all of the following criteria:

(i) Has a CCULR of 9.0 percent or greater;

(ii) Has total off-balance sheet exposures of 25 percent or less of its total assets;

(iii) Has the sum of total trading assets and total trading liabilities of 5 percent or less of its total assets; and

(iv) Has the sum of total goodwill and total other intangible assets of 2 percent or less of its total assets.

(3) *Calculation of Qualifying Criteria.* Each of the qualifying criteria in paragraph (d)(2) of this section is calculated based on data reported in the Call Report as of the end of the most recent calendar quarter.

(4) *Calculation of the CCULR.* A qualifying complex credit union opting into the CCULR framework under this paragraph (d) calculates its CCULR in the same manner as its net worth ratio under § 702.2.

(5) *Opting into the CCULR Framework.* (i) A qualifying complex credit union may opt into the CCULR framework by completing the applicable reporting requirements of its Call Report.

(ii) A qualifying complex credit union can opt into the CCULR framework at the end of each calendar quarter.

(6) *Opting Out of the CCULR Framework.* (i) A qualifying complex credit union may voluntarily opt out of the framework at the end of each calendar quarter.

(7) *Treatment when ceasing to meet the qualifying complex credit union requirements.* (i) If a qualifying complex credit union that has opted into the CCULR framework ceases to meet the qualifying criteria in paragraph (d)(2) of this section, the credit union has two calendar quarters (grace period) either to satisfy the requirements to be a qualifying complex credit union or to calculate its risk-based capital ratio under paragraphs (a) through (c) of this section.

(ii) The grace period begins at the end of the calendar quarter in which the credit union no longer satisfies the criteria to be a qualifying complex credit union. The grace period ends on the last day of the second consecutive calendar quarter following the beginning of the grace period.

(iii) During the grace period, the credit union continues to be treated as a qualifying complex credit union for the purpose of this part and must continue calculating and reporting its CCULR, unless the qualifying complex credit union has opted out of using the CCULR framework under paragraph (d)(6) of this section. The qualifying complex credit union also continues to be considered to have met the capital ratio requirements for the well capitalized capital category under § 702.102(a)(1). However, if the qualifying complex credit union has a CCULR of less than seven percent, it will not be considered to have met the capital ratio requirements for the well capitalized capital category under § 702.102(a)(1) and its capital classification is determined by its net worth ratio.

(v) A qualifying complex credit union that ceases to meet the qualifying criteria in paragraph (d)(2) of this section as a result of a merger or acquisition that is not a supervisory merger or combination has no grace period and must comply with the risk-based capital ratio under paragraphs (a) through (c) of this section in the quarter it ceases to be a qualifying complex credit union.

(e) *Reservation of Authority.* The NCUA may require a complex credit union that otherwise would meet the definition of a qualifying complex credit union to comply with the risk-based capital ratio under paragraphs (a) through (c) of this section if the NCUA determines that the complex credit union's capital requirements under paragraph (d) of this section are not commensurate with its risks. Any credit union required to comply with the risk-based capital ratio under this paragraph (e), would be permitted a minimum of a two-quarter grace period before being subject to risk-based capital requirements.

§ 702.111 [Amended]

■ 7. In § 702.111, amend paragraph (c)(1)(i) by removing ''risk-based capital ratio'' and adding in its place ''risk-based capital measure''.

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

■ 8. The authority citation for part 703 continues to read as follows:

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

§ 703.2 [Amended]

■ 9. In § 703.2, amend the definition of ''Net worth'' by removing ''§ 702.2(f)'' and adding in its place ''§ 702.2''.

§ 703.13 [Amended]

■ 11. In § 703.13, amend paragraph (d)(3)(iii) by

■ a. Removing the phrase ''net worth classification'' and adding in its place the phrase ''capital classifications''; and

■ b. Removing the phrase ''or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained ''well capitalized'' for the six (6) immediately preceding quarters after applying the applicable RBNW requirement''.

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