

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 704

RIN 3133-AD95

Corporate Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final Rule.

SUMMARY: NCUA is issuing final amendments to its rule governing corporate credit unions (corporates). The final amendments make technical corrections to and clarify certain provisions of the rule. The amendments: delete the definition of “daily average net risk-weighted assets”; revise the definition of “net assets” to exclude Central Liquidity Facility (CLF) stock subscriptions; clarify certain requirements regarding investment action plans; clarify the weighted average life (WAL) tests; revise the consequences of WAL violations; substitute the term “core capital” for the phrase “the sum of retained earnings and paid-in capital”; correct a section heading; and correct a model form instruction.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Lisa Henderson, Staff Attorney, Office of General Counsel, at (703) 518-6540; or David Shetler, Deputy Director, Office of Corporate Credit Unions, at (703) 518-6640. You may also contact them at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

A. Background and Specific Amendments

B. Regulatory Procedures

A. Background and Specific Amendments

Why is NCUA Adopting this Rule?

On August 29, 2011, the NCUA Board (Board) issued a Notice of Proposed Rulemaking (NPRM) containing several amendments to its corporate rule at 12 CFR part 704. 76 FR 54991 (Sept. 6, 2011). NCUA received seven comments on the NPRM, most of which favored the proposed changes. For the reasons discussed below, the NCUA Board is adopting the amendments almost exactly as proposed.

Section 704.2 Definition of “daily average net risk-weighted assets”

The term “daily average net risk-weighted assets” was used in a 2009 proposal to revise part 704, 74 FR 65210, 65261 (Dec. 9, 2009), but not in the 2010 final rule, 75 FR 64786, 64831 (Oct. 20, 2010). The term was mistakenly left in the part 704 definitions section, and the Board proposed deleting it in the NPRM. All of the commenters who addressed the proposed change supported it. Accordingly, the Board is deleting the definition of “daily average net risk-weighted assets” from §704.2.

Section 704.2 Definition of “net assets”

Section 704.2 defines “net assets,” in relevant part, as “total assets less loans guaranteed by the NCUSIF and member reverse repurchase transactions.” The NPRM amended the definition to also exclude CLF stock subscriptions, based on the asset’s negligible credit risk and to facilitate corporate support of the CLF. Corporate support is essential to the CLF remaining a back-up liquidity provider for natural person credit unions.

One commenter objected to the proposed change, arguing that it would artificially inflate the leverage ratio for corporates. The Board disagrees. CLF stock is in the nature of a pass-through account, and including it in net assets incorrectly overstates a corporate’s balance sheet. The commenter also argued that credit unions do not need to obtain liquidity through the CLF, as they can become members of the Federal Home Loan Bank (FHLB) system or access the Federal Reserve System’s Discount Window (Discount Window). The Board believes that the CLF provides a critical dimension of

additional liquidity coverage for credit unions. Presently, only 4.5 percent of federally insured credit unions report having filed an application to borrow from the Discount Window, and of those, only 3.3 percent have pre-pledged collateral. Also, many smaller credit unions do not have mortgage assets and would be unlikely to rely on the FHLB system to meet wholesale funding or contingent liquidity needs. The Board therefore adopts in the final rule the revised definition of net assets as proposed.

Section 704.6 Requirements for investment action plans

Sections 704.6(c)(3) and (f)(4) trigger consequences, set forth in §704.10, for violations of certain concentration limits and credit rating requirements. To clarify the applicability of these triggering provisions, the Board proposed moving them to a new §704.6(h). Under proposed §704.6(h), an investment would be subject to the requirements of §704.10 if it violated any of the concentration limits or credit rating requirements of §704.6.

The NPRM noted that §704.6(f)(4)(i) provides that an investment is subject to the requirements of §704.10 if its credit rating is downgraded, after purchase, “below the minimum rating requirements of this part.” It further noted that, pursuant to section

939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act,¹ the NCUA Board issued a proposed rule recodifying §704.6(f)(4)(i) at §704.6(f)(3)(i) and revising it to state that an investment is subject to §704.10 if “[t]here is reason to believe that the obligor no longer has a very strong capacity to meet its financial obligations for the remaining projected life of the security.” 76 FR 11164, 11171 (Mar. 1, 2011). The NPRM included this proposed language at new §704.6(h)(1) even though the language was not yet final.

Three commenters objected to including language from the proposed credit ratings rule in this rulemaking. They urged NCUA to wait until the credit ratings rule was final before amending §704.6(f)(4)(i) as discussed above. The Board agrees. The Board had anticipated that the credit ratings rule would be final by now, but that rule has been delayed. Accordingly, the final rule retains the reference to “minimum ratings requirement.” Since no commenters objected to moving the triggering provisions, the Board moves §704.6(c)(3) and (f)(4) to new §704.6(h) in the final rule as proposed.

Section 704.8 Clarifying the WAL tests

Sections 704.8(f) and 704.8(g) establish certain WAL limits for corporate loan and investment portfolios. They also require each corporate to test those assets

¹ 15 U.S.C. 78o–7 (requiring federal agencies, including NCUA, to review their regulations for any references to using credit ratings to assess the creditworthiness of an investment, remove those references, and substitute other standards of creditworthiness).

periodically for compliance. NCUA intended to allow corporates to include cash in the WAL calculation and clarified that intent in the NPRM by replacing the phrase “loan and investment portfolio” in paragraphs (f) and (g) with the phrase “financial assets, consisting of cash, investments, and loans.” All of the commenters who addressed this proposed change supported it, and therefore the Board adopts it in the final rule.

Section 704.8 Consequences of WAL violations

Section 704.8(j) provides consequences for a corporate’s violation of the interest rate sensitivity and WAL conditions of §704.8(d), (f), and (g). These consequences can include reporting requirements, preparation of a written action plan, and capital category reclassification under §704.4. To reduce regulatory burden, the Board determined that violations of WAL conditions should not be subject to capital category reclassification and, in the NPRM, proposed exempting such violations from the requirements of §704.8(j)(2)(ii) and (iii). All of the commenters who addressed this proposed change supported it, and therefore the Board adopts it in the final rule. The Board notes that persistent WAL violations may still trigger the reporting and action plan requirements of §704.8(j)(1) and (2)(i).

Section 704.18 Fidelity bond maximum deductible

Section 704.18(e)(1) provides a table for corporates to calculate the maximum deductible allowed for fidelity bonds purchased for employees and officials. The maximum deductible is based on a corporate’s core capital ratio and a percentage of

the sum of its retained earnings and paid-in capital. The 2010 revision to part 704 changed the term “paid-in capital” to “perpetual contributed capital” but neglected to change the reference in §704.18. See 75 FR 64786 (Oct. 20, 2010).

In the NPRM, the Board proposed changing the phrase “the sum of its retained earnings and paid-in capital” to the term “core capital.” Section 704.2 defines “core capital” primarily as “the sum of: (1) Retained earnings; (2) Perpetual contributed capital; (3) The retained earnings of any acquired credit union, or of an integrated set of activities and assets, calculated at the point of acquisition, if the acquisition was a mutual combination; and (4) Minority interests in the equity accounts of CUSOs that are fully consolidated.” The Board proposed this substitution, rather than simply replacing “paid-in capital” with “perpetual contributed capital,” because the table already requires the calculation of core capital in deriving the core capital ratio. Two commenters stated that “perpetual contributed capital” should be the replacement term and that NCUA had not provided enough justification for adding the two additional components of “core capital.” The Board notes that adding additional components to the number from which the maximum deductible is derived ultimately raises the maximum deductible, which relieves regulatory burden. Accordingly, the Board adopts the proposed change in the final rule.

Section 704.19 Correction to section heading

The 2009 proposed revisions to part 704 added new §704.19, “Disclosure of executive and director compensation.” 74 FR 65210, 65252 (Dec. 9, 2009). The proposal would

have required corporates to disclose the compensation of each senior executive officer and director annually. *Id.* at 65275. The 2010 final rule removed the reference to directors in the text of §704.19, but failed to do so in the heading. See 75 FR 64786 (Oct. 20, 2010). In the NPRM, the Board proposed harmonizing the two by removing the words “and director” from the heading. All of the commenters who addressed this proposed change supported it, and therefore the Board adopts it in the final rule.

Appendix A, Model Form D

The 2010 final rule included an incorrect date instruction on Model Form D in Appendix A. *Id.* at 64851. Model Form D included introductory text indicating that the form was for use before October 20, 2011, when it should have stated that the form is for use after that date. The Board replaced the word “before” with the phrase “on and after” in the NPRM. All of the commenters who addressed this proposed change supported it, and therefore the Board adopts it in the final rule.

B. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (those under \$10 million in assets). This final rule applies only to

corporate credit unions, all of which have assets well in excess of \$10 million.

Accordingly, the final rule will not have a significant economic impact on a substantial number of small credit unions, and a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden. 44 U.S.C. 3507(d); 5 CFR part 1320. For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. This final rule does not impose any new paperwork burden.

Executive Order 13132

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

The final rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that

this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999--Assessment of Federal Regulations and Policies on Families

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

List of Subjects in 12 CFR part 704

Credit unions, Corporate credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 15, 2011.

Mary F. Rupp

Secretary of the Board

For the reasons stated above, the National Credit Union Administration amends 12 CFR part 704 as set forth below:

PART 704--CORPORATE CREDIT UNIONS

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

Authority: 12 U.S.C. 1762, 1766(a), 1772a, 1781, 1789, and 1795e.

2. Amend §704.2 by removing the definition of “daily average net risk-weighted assets” and revising the definition of “net assets” to read as follows:

§704.2 Definitions.

* * * * *

Net assets means total assets less Central Liquidity Facility (CLF) stock subscriptions, loans guaranteed by the NCUSIF, and member reverse repurchase transactions. For its own account, a corporate credit union’s payables under reverse repurchase agreements and receivables under repurchase agreements may be netted out if the GAAP conditions for offsetting are met. Also, any amounts deducted from core capital in calculating adjusted core capital are also deducted from net assets.

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3. Amend §704.6 by removing paragraphs (c)(3) and (f)(4) and adding new paragraph (h) to read as follows:

§704.6 Credit risk management.

* * * * *

(h) Requirements for investment action plans. An investment is subject to the requirements of §704.10 of this part if:

(1) An NRSRO that rates the investment downgrades that rating, after purchase, below the minimum rating requirements of this part; or

(2) The investment is part of an asset class or group of investments that exceeds the issuer, sector, or subsector concentration limits of this section. For purposes of measurement, each new credit transaction must be evaluated in terms of the corporate credit union's capital at the time of the transaction. An investment that fails a requirement of this section because of a subsequent reduction in capital will be deemed nonconforming. A corporate credit union is required to exercise reasonable efforts to bring nonconforming investments into conformity within 90 calendar days. Investments that remain nonconforming for more than 90 calendar days will be deemed to fail a requirement of this section and the corporate credit union will have to comply with §704.10 of this part.

4. Amend §704.8 by:

a. Revising the first two sentences in paragraphs (f) and (g); and

b. Revising (j)(2)(ii) and (iii).

The revisions read as follows:

§704.8 Asset and liability management.

* * * * *

(f) * * * The weighted average life (WAL) of a corporate credit union's financial assets, consisting of cash, investments, and loans, but excluding derivative contracts and equity investments, may not exceed 2 years. A corporate credit union must test its financial assets at least quarterly, including once on the last day of the calendar quarter, for compliance with this WAL limitation. * * *

(g) * * * The weighted average life (WAL) of a corporate credit union's financial assets, consisting of cash, investments, and loans, but excluding derivative contracts and equity investments, may not exceed 2.25 years when prepayment speeds are reduced by 50 percent. A corporate credit union must test its financial assets at least quarterly, including once on the last day of the calendar quarter, for compliance with this WAL limitation. * * *

* * * * *

(j) * * *

(2) * * *

(ii) If presently categorized as adequately capitalized or well capitalized for prompt corrective action purposes, and the violation was of paragraph (d) of this section, immediately be recategorized as undercapitalized until the violation is corrected, and

(iii) If presently categorized as less than adequately capitalized, and the violation was of paragraph (d) of this section, immediately be downgraded one additional capital category.

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5. Amend §704.18 by revising the table in paragraph (e)(1) to read as follows:

§704.18 Fidelity bond coverage.

* * * * *

(e) * * *

(1) * * *

Core capital ratio	Maximum deductible
Less than 1.0 percent	7.5 percent of core capital
1.0 – 1.74 percent	10.0 percent of core capital
1.75 – 2.24 percent	12.0 percent of core capital
Greater than 2.25 percent	15.0 percent of core capital

* * * * *

6. Amend §704.19 by revising the section heading to read as follows:

§704.19 Disclosure of executive compensation.

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7. Amend the introductory note in Model Form D, Appendix A to Part 704, to read as follows:

Appendix A to Part 704 – Capital Prioritization and Model Forms

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Model Form D

Note: This form is for use on and after October 20, 2011, in the circumstances where the corporate credit union has determined that it will give newly issued capital priority over older capital as described in Part I of this Appendix.

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